



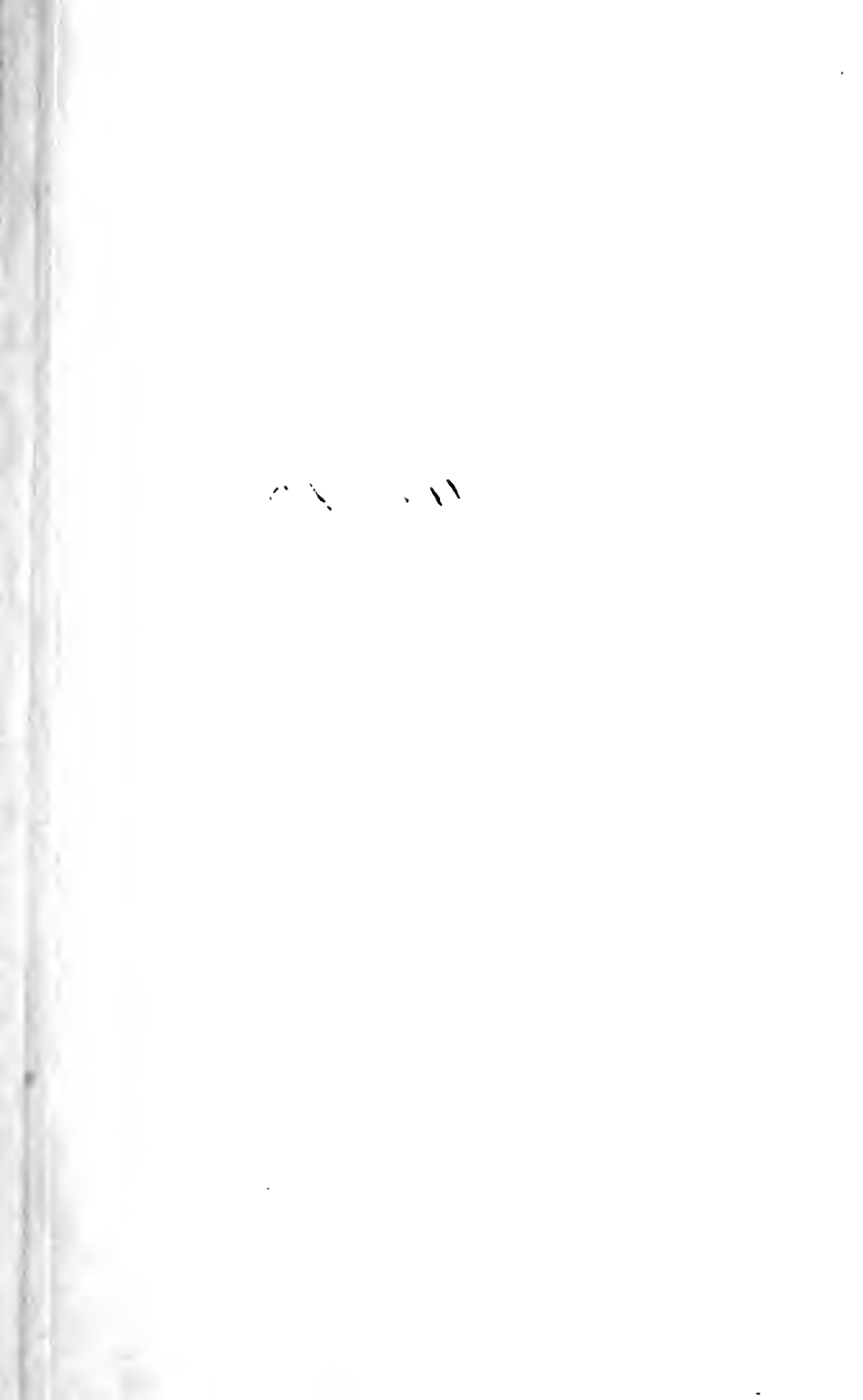
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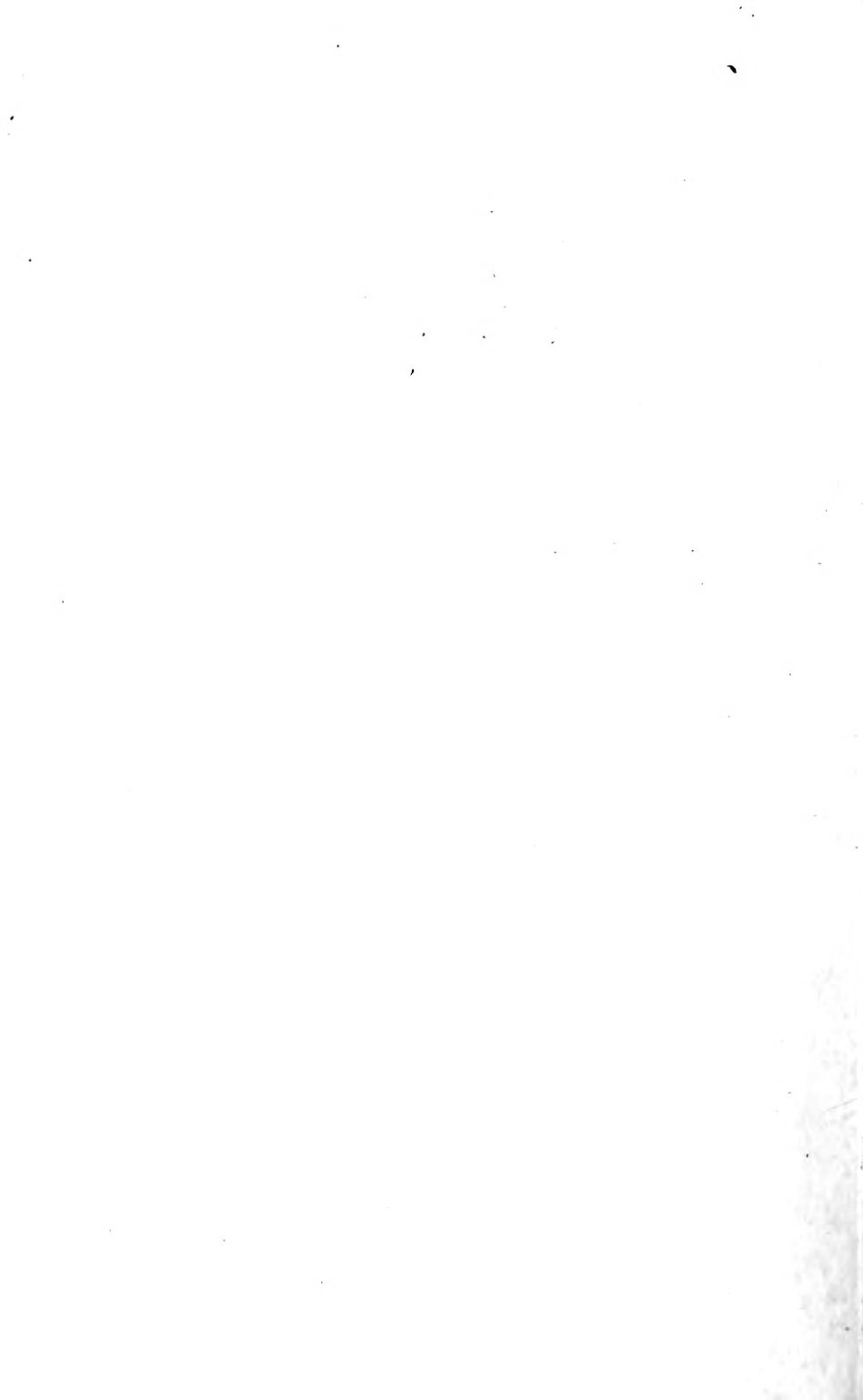
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No. 10148

United States
Circuit Court of Appeals
For the Ninth Circuit.

Vol
2307

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

J. G. BOSWELL COMPANY and CORCORAN
TELEPHONE EXCHANGE,

Respondents.

see Vols
2307-2308

Transcript of Record

In Seven Volumes

VOLUME I

Pages 1 to 497

FILED

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PAUL P. O'BRIEN,
CLERK

Upon Petition for Enforcement of An Order of the
National Labor Relations Board

No. 10148

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,

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National Labor Relations Board

INDEX

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	Page
Amended Charge, Fourth (Board's Exhibit 1-R)	3
Amended Complaint (Board's Exhibit 1-S) ..	11
Answer of J. G. Boswell Company Employees Association of Corcoran and Tipton, California, to Petition for Enforcement of an Order of the National Labor Relations Board.....	641
Answer of J. G. Boswell Company and Corcoran Telephone Exchange to Petition for Enforcement filed by the National Labor Relations Board (Case No. C-1476) and Motion to Vacate and Set Aside Purported Order of the National Labor Relations Board in said Case	645
Charge of Margaret A. Dunn against Corcoran Telephone Exchange (Board's Exhibit 1-Q) ..	1
Charge, Fourth Amended, of Cotton Products and Grain Mill Workers Union Local No. 21798, AFL (Board's Exhibit 1-R)	3
Complaint, Amended (Board's Exhibit 1-S) ...	11

Index	Page
Decision and Order of National Labor Relations Board	499
Appendix A	623
Conclusions of Law.....	615
Findings of Fact.....	508
Order	616
Exceptions, Statement of.....	160
Fourth Amended Charge (Board's Exhibit 1-R)	3
Intermediate Report of Trial Examiner.....	27
Conclusions and Recommendations.....	151
Findings of Fact.....	36
Order to Show Cause.....	636
Returns on Service of Writs.....	637-641
Order and Decision of National Labor Relations Board	499
Petition for Enforcement of an Order of the National Labor Relations Board.....	627
Answer of J. G. Boswell Co. to.....	641
Answer of J. G. Boswell Company and Corcoran Telephone Exchange to.....	645
Report of Trial Examiner, Intermediate.....	27
Returns on Service of Writs to Order to Show Cause	637-641
Statement of Points to be Relied Upon (CCA)	3342

Index	Page
Statement of Exceptions.....	160
Testimony	693
Exhibits for J. G. Boswell Company:	
2—"Notice of Employees", J. G. Boswell Company	967
3—Article appearing in Corcoran News on or about January 20, 1939, entitled "Attention J. G. Boswell Co. Employees".....	970
5—Application of E. C. Powell for Membership in Union, November 11, 1938	1415
6—Registered letter from J. G. Bos- well Co., Louis T. Robinson, ad- dressed to E. C. Powell, dated Nov. 28, 1938.....	1451
7—Registered letter to H. N. Wingo signed J. G. Boswell Co., Louis T. Robinson, dated December 6, 1938.	1647
8—Letter addressed to G. L. Ham- mond, Supt. of J. G. Boswell Co., signed J. C. Boswell Co., Louis T. Robinson, dated October 17, 1938.	1772
9a—Time Card of L. E. Ely, October 27, 1938	2971
9b—Time Card of L. E. Ely, Novem- ber 3, 1938.....	2974

Index	Page
Exhibits for J. G. Boswell Co. (Continued):	
9c—Time Card of L. E. Ely, November 10, 1938.....	2976
9d—Time Card of L. E. Ely, November 17, 1938.....	2979
11—Memorandum “Notice to Employees” written on Stationery of Hotel Tulare	2640
12—“Notice to Employees”, J. G. Boswell Co. Final Draft approved by Larsen	2641
13—“Notice to Employees”, J. G. Boswell Co.	2644
14—Copy of Registered Letter with Return Receipt Attached to George Andrade from J. G. Boswell Co., November 28, 1938.....	2858
15—Copy of Registered Letter and Return Receipt to L. E. Ely, November 28, 1938, from J. G. Boswell Co.	2862
16—Copy of Registered Letter and Return Receipt to E. C. Powell, November 28, 1938, from J. G. Boswell Co.	2864
17—Copy of Registered Letter and Return Receipt, R. K. Martin, November 28, 1938, from J. G. Boswell Co.	2966

Index	Page
Exhibits for J. G. Boswell Co. (Continued):	
18—Copy of Registered Letter and Return Receipt, H. N. Wingo, December 6, 1938, from J. G. Boswell Co.	2868
19—Copy of Registered Letter to L. A. Spear with Return Receipt attached, dated December 6, 1938, from J. G. Boswell Co.....	2870
20—Copy of Registered Letter and Return Receipt to O. L. Farr, December 6, 1938, from J. G. Boswell Co.	2872
21—Preliminary Examination, City Court of the City of Corcoran, County of Kings, State of California, February 18, 1938, People of State of California vs. E. C. Powell	2947
22a-g—Weekly time cards of Steve Griffin, for period of August 5, 1938 to November 17, 1938..	2981-2984
23a—Social Security Record of Vernon M. Rood.....	3083
23b—Social Security Record of H. N. Smith	3086
23c—Social Security Record of Andrew Clark	3088

	Index	Page
Exhibits for National Labor Relations Board:		
1Q—Charge of Margaret Dunn against Corcoran Telephone Ex- change		726
Set out at page.....		1
1R—Fourth Amended Charge of Cot- ton Products and Grain Mill Workers		726
Set out at page.....		3
1S—Amended Complaint		726
Set out at page.....		11
1CC—Motion to Dismiss of the Cor- coran Telephone Exchange and Affidavit of Service by Mail, dated May 13, 1939.....		726
1DD—Motion to Dismiss of the J. G. Boswell Co. and Affidavit of Serv- ice by Mail, dated May 13, 1939...		729
1EE—Answer to Amended Complaint by Respondent J. G. Boswell Co. and Affidavit of Service by Mail, dated May 15, 1939.....		732
1FF—Answer to Amended Com- plaint by Respondent Corcoran Telephone Exchange and Affidavit of Service by Mail, dated May 15, 1939		745

Index	Page
Exhibits for National Labor Relations Board (Continued):	
2—Stipulation by and between J. G. Boswell Company and Frank A. Mouritsen, Attorney for National Labor Relations Board, relative to the Operations and Commerce engaged in by J. G. Boswell Company, filed 5/18/39.....	715
3—Social Security Records of Certain Employees of J. G. Boswell Company	779-805
8—Registered Letter to L. E. Ely, November 28, 1938, J. G. Boswell Co., Louis T. Robinson.....	1792
9—Letter to Associated Farmers of California, Inc., October 18, 1938, from Franchise Tax Commissioner	1954
18—Constitution and By Laws of J. G. Boswell Company Employees' Association of Corcoran and Tipton.	2372
19—List of Employees Who Attended Meeting Held in the Office of the Boswell Company at Corcoran on November 18, 1938.....	2451
20a—Annual Report of Pacific Telephone and Telegraph Company for 1938, Excerpts from.....	2466

	Index	Page
Exhibits for National Labor Relations Board (Continued):		
20b—Annual Report of American Telephone and Telegraph Company for 1938, Excerpts from...		2467
21—Telegram dated March 21, 1939, Margaret A. Dunn to Alice M. Rosseter, National Labor Relations Board		2517
22—Letter to National Labor Relations Board, Attention Miss Rosseter, April 4, 1939, signed Margaret A. Dunn.....		2519
23—Letter dated April 14, 1939 to National Labor Relations Board, Mr. Shaw, signed Margaret A. Dunn.		2525
24—Letter dated November 18, 1938, J. G. Boswell Co., Los Angeles, California, signed Louis T. Robinson		2601
25—Memo to L. T. Robinson from G. L. Hammond, dated November 19, 1938		2604
26—Letter to J. G. Boswell Co., Corcoran, California, November 25, 1938, signed Fred G. Sherrill, Treasurer		2607

Index

Page

Exhibits for National Labor Relations
Board (Continued):

- 27—Letter to J. G. Boswell Co., Los Angeles, California, November 29, 1938, signed J. M. Hubbard, President and E. M. Roberson, Secretary2609
- 28—Letter to J. G. Boswell Co., Los Angeles, April 15, 1939, signed H. G. McKeever, Secretary.....2611

Testimony in the Preliminary Examination in the matter of People of the State of California vs. E. C. Powell before the Honorable W. I. Nonhof, Judge of the City Court, Corcoran, California, February 18, 1938.....1359

Carden, B. H.

—direct1359

Powell, E. C.

—direct1363

Witnesses for National Labor Relations
Board:

Andrade, E. J.

—direct1699

—cross1712

—redirect1740

—recross1743

Index	Page
Witnesses for National Labor Relations Board (Continued):	
Archer, Grover T.	
—direct	2255
—cross	2260
—redirect	2260
Botts, Harold E.	
—direct	2033
—cross	2046
—redirect	2051
—recalled, cross	2240
Boyett, J. B.	
—direct	1939, 1953, 1975
—voir dire	1942
—cross	2021
—redirect	2028
—recross	2032
Brenes, Samuel	
—direct	2367
—cross	2423, 2435, 2437
—voir dire	2430, 2437
—redirect	2450
Cutter, George Henry	
—direct	2130
—cross	2142
—redirect	2145
—recross	2146

Index

Page

Witnesses for National Labor Relations
Board (Continued):

Dunn, Dorothy

—direct	1669
—cross	1677, 1678

Dunn, John Ernest

—direct	2560
—cross	2568

Dunn, Margaret A.

—direct	2496
—cross	2528
—redirect	2556
—recross	2557
—recalled, cross	2574

Ely, Boyd L.

—direct	1744
—cross	1756

Ely, Eugene Clark

—direct	1914
—cross	1929
—redirect	1937
—recross	1937
—recalled, direct	2345
—cross	2355

Index	Page
Witnesses for National Labor Relations Board (Continued):	
Ely, L. Elgin	
—direct	1775
—cross	1797, 1805, 1807, 1811
—voir dire	1806, 1810
—recalled, direct	2159, 2291
—cross	2167
Farr, O. L.	
—direct	982
—cross	1016, 1052
—redirect	1092
Gilkey, Ralph	
—direct	2302
Gilkey, Raymond	
—direct	2264
—cross	2269
Gilmore, James William	
—direct	1482, 1831
—cross	1844
—redirect	1856
—recross	1857
Glenn, C. H.	
—direct	2458
—cross	2483
—redirect	2490
—recross	2492

Index	Page
Witnesses for National Labor Relations Board (Continued):	
Griffin, Stephen J.	
—direct	1858, 1890
—cross	1895
Grisham, Walter E.	
—direct	2271
—cross	2278
Hanson, Louis A.	
—direct	2249
—cross	2254
Hanson, Phillip	
—direct	2294
—cross	2299
Hubbard, James W.	
—direct	2280
—cross	2285
—redirect	2288, 2289
—recross	2289
Johnston, W. R.	
—direct	950
—cross	954
—redirect	974
—recross	977
—recalled, direct	981, 2190
—cross	2195

Index	Page
Witnesses for National Labor Relations Board (Continued):	
Liggett, Lloyd	
—direct	2108
—cross	2125
—redirect	2126
Marshall, Ralph	
—direct	2336
Martin, R. K.	
—direct	1201
—cross	1226
—redirect	1245
—recross	1253
—recalled, direct	2171, 2210
—cross	2183, 2214
—redirect	2232
—recross	2234
Powell, Evan C.	
—direct	1256, 1278
—cross	1297, 1368, 1396, 1457
—redirect	1467
—recross	1476, 1481
Prior, E. F.	
—direct	815, 846, 938
—voir dire	841
—recalled, cross	1093, 1132, 1199
—redirect	1199

Index

Page

Witnesses for National Labor Relations
Board (Continued):

Riley, Forrest

—direct	2058
—cross	2080
—redirect	2084

Robinson, Louis T.

—direct	761
—recalled, direct	2577
—cross	2614
—redirect	2624, 2645
—recross	2633, 2646

Salyer, E. C.

—direct	2087
—cross	2105

Sherman, Brice

—direct	2307
—cross	2313

Slaybough, Russel Charles

—direct	2150
---------------	------

Spear, L. A.

—direct	1490, 1523
—cross	1545, 1593
—redirect	1602
—recross	1605

	Index	Page
Witnesses for National Labor Relations Board (Continued):		
Wilbur, Robert		
—direct		2314
—cross		2329
—redirect		2330
Wingo, H. N.		
—direct		1610
—cross		1627
—redirect		1650
—recross		1653
Winslow, Walter		
—direct		1653, 1683
—cross		1690
—recalled, direct		2245
—cross		2248
Witness for All Respondents:		
Mouritsen, Frank A.		
—direct		2795, 2802
—cross		2803
Witnesses for Respondent, Associated Farmers of Kings County:		
Baihly, Moses D.		
—direct		2720
—cross		2720

Index

Page

Witnesses for Respondent, Associated
Farmers of Kings County (Continued):

Bell, Geo. W.

—direct	2673
—cross	2679
—redirect	2685

Boswell, William W.

—direct	2940
---------------	------

Botts, Harold E.

—direct	2722
—cross	2727, 2753
—redirect	2784
—recross	2790
—recalled, cross	2814
—redirect	2822
—recross	2827
—surrebuttal, direct	3329
—cross	3329
—redirect	3330

Boyett, J. B.

—recalled, direct	3208
—cross	3212

Case, John Arthur

—direct	2705
—cross	2708
—redirect	2717

Index	Page
Witnesses for Respondent, Associated Farmers of Kings County (Continued):	
Clark, Cassius C.	
—direct	2699
—cross	2701
Clark, Webster V.	
—direct	2804
Degnan, J. H.	
—direct	2689
—cross	2691
Mackey, Joseph Alexander	
—direct	2695
—cross	2696
Painter, John	
—direct	2807
Patten, T. W.	
—direct	2667
—cross	2669
Robinson, Louis	
—recalled, direct	2810
—cross	2812
Witnesses for Respondent, J. G. Boswell Company:	
Boswell, W. W.	
—direct	3203
—cross	3207

Index	Page
Witnesses for Respondent, J. G. Boswell Company (Continued):	
Hammond, Gordon L.	
—direct	2962, 3049
—cross	3111, 3133, 3152
—redirect	3181
—recross	3201
Robinson, Louis T.	
—recalled, direct	2836, 2886
—cross	2898
—redirect	2933
—recross	2938
Walch, Roger R.	
—direct	902
—cross	926
Witnesses for Respondent, Corcoran Tele- phone Exchange:	
Crary, Blakely G.	
—direct	3303
—cross	3306
Glenn, C. H.	
—recalled, direct	3219
—cross	3278, 3285
Woodruff, James William	
—direct	3309
—cross	3316
—redirect	3319

BOARD'S EXHIBIT 1-Q

United States of America

Before the National Labor Relations Board
20th Region

Case No. XX C619

Date filed Mar. 14, 1939

In the Matter of

CORCORAN TELEPHONE EXCHANGE

and

(Mrs.) MARGARET A. DUNN

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Mr. C. H. Glenn, pres. Corcoran Telephone Exchange; Corcoran, Calif. has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that

On March 1, 1939, my employer, Mr. H. C. Glenn, president of the Corcoran Telephone Exchange asked me to resign my position as chief operator—held for fifteen years—because I had been accused of giving information to a labor organizer and to pickets at the J. G. Boswell Cotton Gin in Corcoran. Mr. Glenn Claimed that “pressure was brought to bear” upon him by employees of the Boswell Com-

pany and a group of farmers. This I refused to do and the next day I was discharged. Mr. Glenn refused to talk to me about the matter. My daughters do not belong to a labor organization nor are they engaged in any union activities (although Mr. Glenn claimed that they were giving the information to the pickets) but the accusations came because my daughters were seen talking to Mr. Prior, a labor organizer; they, however, were receiving a personal message through Mr. Prior, from Drexel Sprecker, a N.L.R.B. attorney, who one of my daughters met in Los Angeles long before there was any labor trouble in Corcoran.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

MARGARET A. DUNN

Box 963

Corcoran, Calif.

Subscribed and sworn to before me this 13 day of March, 1939 at Corcoran.

[Seal]

FRED GALUSHA

My Commission Expires Oct. 4, 1942.

BOARD'S EXHIBIT 1-R

United States of America

Before the National Labor Relations Board

21st Region

Case No. XXI C1025

Date filed 5/4/1939

89 inv.

In the Matter of

J. G. BOSWELL COMPANY, a corporation,
ASSOCIATED FARMERS OF KINGS
COUNTY, INC., a corporation, and COR-
CORAN TELEPHONE EXCHANGE, a cor-
poration.

and

COTTON PRODUCTS AND GRAIN MILL
WORKERS UNION, LOCAL NO. 21798, AFL

FOURTH AMENDED CHARGE

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that J. G. Boswell Company, Corcoran, California, Associated Farmers of Kings County, Inc., Hanford and Corcoran, California, and Corcoran Telephone Exchange, Corcoran, California has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2), (3), & (4) of said Act, in that

(1) J. G. Boswell Company, hereinafter called the "Company", through its supervisory employees,

told certain of its employees that they would lose their jobs if they joined the Cotton Products and Grain Mill Workers' Union, Local No. 21798, A. F. L. hereinafter called the "Union"; made statements condemning the Union; said that the Company opposed the Union; said that the Company would cease certain operations if the employees joined the Union; induced employees to spy upon and report to the Company the activities of Union members and Union meetings; offered discharged Union members employment if they would withdraw from the Union; and, by these and other acts, said Company did violate Section 8 (1) of the Act. Said statements were made and said actions taken on or about July 5, 6, 15, 16, 17, September 19, 20, October 29, 31, almost every day during November, all in the year 1938, and generally during the months of July, September, October, November, and December of 1938, and January of 1939.

(2) On or about March 20, 1938, the Company discharged James W. Gilmore, and on or about July 1, 1938, refused to reinstate said James W. Gilmore because he attempted to organize the employees of the Company, and with other employees engaged in concerted activities for their mutual aid and protection, and by said acts the Company violated Section 8 (3) of the Act.

(3) On or about November 17, 1938, the Company discharged the following employees because of their Union activities, and in so doing violated Section 8 (3) of the Act:

1. W. R. Johnston
2. Stephen J. Griffin
3. Elmer Eller

(4) On or about November 15, 1938, the Company locked out Boyd Ely and Walter Winslow by shutting down the oil mill where these men were employed, and failed to rehire these men when said oil mill resumed operations on or about January 6, 1939, because said men joined and assisted the Union, and by these acts the Company violated Section 8 (3) of the Act.

(5) On November 18, 1938, certain supervisory employees of the Company encouraged an anti-Union demonstration upon the Company's premises, and stood idly by when numerous employees of the Company and others, some of whom were former employees of the Company, gathered upon the premises of the Company at Corcoran, California, and engaged in an anti-Union demonstration, and by these acts the Company did violate Section 8 (1) of the Act.

(6) On November 18, 1938, certain supervisory employees of the Company actively encouraged the eviction from the Corcoran plant of Union employees by certain employees of the Company and others, some of whom were former employees of the Company. On the same day, certain supervisory employees of the Company permitted the eviction from the Corcoran plant, of Union employees by certain employees of the Company and others, some of whom had been former employees of the Company. By

these acts the Company did violate Section 8 (1) of the Act.

(7) On or about November 18, 1938, the Company, through certain supervisory employees and other employees requested Union members to leave the employment of the Company, and because of the intimidation accompanying such requests, the Company in fact discharged the following Union employees and thereby did violate Section 8 (3) of the Act:

1. George J. Andrade
2. Joe Briley
3. O. L. Farr
4. R. K. Martin
5. E. C. Powell
6. L. A. Spear
7. H. N. Wingo.

(8) On or about November 19, 1938, the Company refused to reinstate the employees named in Paragraph 7 of this Charge because they joined and assisted the Union, and by such acts violated Section 8 (3) of the Act.

(9) On or about November 18, 1938, the Company, through its executives and supervisory officials, instigated and formed a labor organization of its employees, first known as the "Company Union" and later named the "J. G. Boswell Company Employees' Association of Corcoran and Tipton," hereinafter called the "Association". Since the inception of the Association, the Company has given financial and other assistance to it, and has other-

wise dominated its administration, and since the formation of the Association, the Company has coerced its employees into joining the Association. By these acts the Company has violated Section 8 (2) of the Act.

(10) On or about November 13, 1938, the Company reduced the hourly wage of L. E. Ely from 40c to 35c per hour, and on or about December 2, 1938, the Company refused to reemploy said L. E. Ely, because he joined and assisted the Union and by said acts and each of them, the Company violated Section 8 (3) of the Act.

(11) Because of the unfair labor practices listed above, on or about January 20, 1938, the Union instituted a boycott of the Company's products, and stationed pickets at the Company's Corcoran plant, and said activities are being carried on at the present time.

(12) On January 30, 1939, the Company discharged Eugene Clark Ely because of his union activities and did thereby violate Section 8 (3) of the Act.

(13) On January 30, 1939, the Company and the Associated Farmers of Kings County, Inc. acting through the following-named individuals:

- | | |
|------------------|-------------------|
| 1. G. F. Archer | 4. Roy Filcher |
| 2. Roland Bailey | 5. Ralph Gilkey |
| 3. George Cutter | 6. Raymond Gilkey |

- | | |
|--------------------|----------------------|
| 7. Walter Grisham | 16. E. C. Salyers |
| 8. Louie Hammond | 17. Garland Salyers |
| 9. Phil Hammond | 18. Glen Sego |
| 10. J. W. Hubbard | 19. Ronald Squire |
| 11. Slim Jones | 20. William Turner |
| 12. Loyd Legget | 21. Robert Wilbur |
| 13. Joe Mackey | 22. Brice Sherman |
| 14. Ralph Marshall | 23. Russel Slaybough |
| 15. Forrest Riley | |

and over 200 others, did prepare and engage in an anti-Union demonstration, which took place both off and on the premises of the Company at Corcoran. At that part of the anti-Union demonstration which took place at the entrance of the Company's Corcoran plant, the above individuals did threaten Union pickets, and other Union men with physical violence if the Union engaged in further picketing, and these same individuals threatened both the Union pickets and other Union men with physical violence if they remained in Corcoran or engaged in further Union activities in the neighborhood. By these acts the Company and the Associated Farmers of Kings County, Inc., violated Section 8 (1) of the Act.

(14) The Company and the Associated Farmers of Kings County, Inc., have made up and caused to be circulated among the employers of labor in and

about Kings County, lists of the employees of the Company who are members of the Union and have requested such employers of labor to refuse employment to members of the Union on account of their membership and activities in the Union, and did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

(15) On March 1, 1939 the Company, the Associated Farmers of Kings County, Inc., and Corcoran Telephone Exchange did discharge and cause to be discharged one Margaret A. Dunn from her position of employment with said Corcoran Telephone Exchange for the reason that they suspected that said Margaret A. Dunn had engaged in Union activities, and thereby engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act.

(16) By the acts and conduct alleged in Paragraphs 1 to 15 inclusive and other acts, the Company, the Associated Farmers of Kings County, Inc., and the Corcoran Telephone Exchange did engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the National Labor Relations Act.

(17) On March 14 and thereafter, the Company, the Associated Farmers of Kings County, Inc., and Corcoran Telephone Exchange refused or caused to be refused the reinstatement of Margaret A. Dunn to her regular position of employment with said Corcoran Telephone Exchange for the reason that said

Margaret A. Dunn had filed charges with the National Labor Relations Board, and did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (4) of said Act.

(18) By refusing to reinstate and by refusing to permit the reinstatement of said Margaret A. Dunn to her regular position of employment with the Corcoran Telephone Exchange, the Corcoran Telephone Exchange, the Company, and the Associated Farmers of Kings County, Inc., did engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

(19) On and after March 14, 1939 the Company, Corcoran Telephone Exchange, and the Associated Farmers of Kings County, Inc., acting by and through its President, J. B. Boyett, threatened Margaret A. Dunn with the loss of employment of her husband, J. Ernest Dunn and her son Walter Dunn; with a boycott of the beauty parlor operated by her son and daughter, Jack and Margaret Dunn; and with a slanderous attack upon her character, if she did not withdraw her charges before the National Labor Relations Board; and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organiza-

tion making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

COTTON PRODUCTS AND GRAIN MILL
WORKERS' UNION LOCAL NO. 21798,
A.F.L.

E. F. PRIOR,
Business Representative
309 Broad Avenue, Wilmington,
Calif. Ph. 1455

Subscribed and sworn to before me this 4th day
of May, 1939 at Los Angeles, Calif.

FRANK A. MOURITSEN,
Attorney 21st Region, National
Labor Relations
Board, Federal Building

BOARD'S EXHIBIT 1-S

Date filed 5/18/39

[Title of Board and Cause.]

AMENDED COMPLAINT

It having been charged by the Cotton Products and Grain Mill Workers' Union, Local No. 21798, hereinafter called the "Union", affiliated with the American Federation of Labor, herein called the A. F. of L., that the J. G. Boswell Company, herein called the "Respondent", the Associated Farmers of Kings County, Inc., herein called the "Associated Farm-

ers", and the Corcoran Telephone Exchange, herein called the "Exchange", have engaged in and are now engaging in certain unfair labor practices as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board by the Regional Director for the Twenty-first Region, as agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations, Series 1—as amended, hereby issues its Amended Complaint and alleges as follows:

1. Respondent is and at all times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of California, and at all times herein mentioned has engaged in and now engages in the business of growing and financing the growing of cotton, feeding cattle, ginning and baling cotton, extracting cottonseed oil from cottonseed, and the processing, selling and distribution of cotton, cottonseed oil, and cottonseed cake and meal. Respondent's main office is situated at 354 South Spring Street, in the City of Los Angeles, California, and it owns and operates offices, gins and/or mills at the following places: Corcoran, Bakersfield, Mendota, Porterdale, Tipton, Tulare, Fresno, McFarland, Calipatria, Blythe, and Calexico, all in the State of California; and Phoenix, Yuma, Somerton, Parker, Buckeye, Camelback, Coolidge, Litchfield, Scottsdale, Litchfield Park, and West Chandler, all in the State of Arizona.

2. Associated Farmers is and at all times here-

inafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of California, and at all times herein mentioned has actively opposed and prevented the exercise by employees of rights guaranteed to employees by the National Labor Relations Act, and at all times herein mentioned has acted, directly and indirectly, in the interest of Respondent, and is an employer within the meaning of Section 2, subdivision (2) of the Act.

3. The Exchange is a corporation organized under and existing by virtue of the laws of the State of California since the 29th day of November, 1922, and at all times herein mentioned, has engaged in, and now engages in the business of operating a telephone system and transmitting and receiving telephonic communications in the City of Corcoran, California, and Kings County, California; said Exchange owns and operates lines and cables which connect with lines and cables of the Pacific Telephone and Telegraph Company, a subsidiary of the American Telephone and Telegraph Company, and by and through such connections said Exchange transmits telephonic communications in interstate commerce.

4. Respondent in the course and conduct of its business and in the operation of its plant at Corcoran, California, causes and has continuously caused large quantities of materials consisting of burlap and metal bands to be purchased and transported in interstate and foreign commerce, and through

states of the United States other than the State of California, to the Corcoran plant in the State of California; and causes and has continuously caused in excess of fifty per cent. (50%) of all cotton, cottonseed oil, and cottonseed cake and meal purchased, processed, produced, and baled by it to be sold, transported, and distributed in interstate and foreign commerce from the Corcoran plant in the State of California, into and through states of the United States other than the State of California, upon the high seas, and into foreign countries.

5. The Union is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

6. Respondent by its officers, agents, and employees while engaged at its Corcoran plant as aforesaid, did seek to discourage and did thereby discourage membership of its Corcoran plant employees in and their affiliation with the Union, by statements to its employees criticizing and condemning the Union and its officers; by questioning its employees regarding their Union affiliation; by advising individual employees that "the Union was no good"; that "the Company will never recognize the Union"; that "if the boys wanted to work for Boswell's they'd better not join the Union"; that "there was no place for Union men in the plant"; that "the oil mill was closing down because of the Union"; that "the Company does not want a Union"; inducing certain of its employees and others to spy upon and make reports to it regarding the activities of the

Union and its members; by offering employment to discharged Union members if they would withdraw from the Union; and by such acts and each of them and by other acts did interfere with, restrain and coerce its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act, and did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the said Act.

7. The acts alleged in Paragraph 6 above, occurred on or about July 5, 6, 15, 16, and 17, 1938; September 19, 20, 1938; October 29, 31, 1938; almost every day during the month of November, 1938; and generally during the months of July, September, October, November, and December of 1938, and January of 1939; among those participating on behalf of Respondent in the acts alleged were: Gordon Hammond, Joseph Hammond, Thomas Hammond, and Louis T. Robinson, all supervisory employees of Respondent.

8. On or about November 17, 1938, Respondent discharged W. R. Johnston, Stephen J. Griffin, and Elmer Eller; and on or about January 30, 1939, discharged Eugene Clark Ely, because said employees joined and assisted the Union, and engaged in concerted activities with other employees for their mutual aid and protection.

9. On or about November 15, 1938, Respondent locked out Boyd Ely and Walter Winslow by shutting down the oil mill where they were employed, and refused and failed to rehire said employees when the

oil mill resumed operations on or about January 6, 1939, because said employees joined and assisted the Union, and engaged in concerted activities with other employees for their mutual aid and protection.

10. On or about November 13, 1938, Respondent reduced the hourly wage of L. E. Ely from 40c to 35c per hour, and on or about December 2, 1938, Respondent refused to reemploy said L. E. Ely because he joined and assisted the Union, and engaged in concerted activities with other employees for their mutual aid and protection.

11. On or about November 18, 1938, Respondent, acting through its officers and agents, did encourage and permit an anti-Union demonstration at its Corcoran plant, and with full knowledge did encourage and permit employees and supervisory employees to drive (by means of force and violence and threats of force and violence) from their work and from the plant at Corcoran, George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, E. C. Powell, L. A. Spear, and H. N. Wingo, and did nothing to prevent such eviction, nor to protect the above-named employees, because said employees joined and assisted the Union, and engaged in concerted activities with other employees for their mutual aid and protection.

12. On or about November 19, 1938, Respondent refused and failed to reinstate to their positions the employees named in Paragraph 11 above, for the reason that they joined and assisted the Union, and engaged with other employees in concerted activities for their mutual aid and protection.

13. By the acts alleged in Paragraphs 8, 9, 10, 11 and 12 above, and by each of them, Respondent did discriminate in regard to hire and tenure of employment to discourage membership in the Union, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

14. By the acts alleged in Paragraphs 8, 9, 10, 11 and 12 above, and by each of them and by other acts, the Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its Corcoran plant employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

15. On or about November 18, 1938, Respondent by its officers, agents and employees while engaged at its Corcoran plant as aforesaid, did form and cause to be formed at its Corcoran plant a labor organization within the meaning of Section 2, subdivision (5) of the Act, first known as the "Company Union" and subsequently known as "J. G. Boswell Company Employees' Association of Corcoran and Tipton", hereinafter called the "Association".

16. Respondent formed, and caused the Association to be formed by supervisory employees of Respondent. Said supervisory employees actively participated in the formation of the Association and became officers and members thereof. Respondent has dominated and interfered with and is now dominat-

ing and interfering with the administration of the Association by permitting the Association to hold meetings at the Corcoran plant of Respondent, by threatening employees with loss of employment if they did not become members of the Association and attend its meetings, by increasing the wages and amount of employment of employees who became members of the Association, and by soliciting employees during working hours to become members of and to attend meetings of the Association.

17. The acts alleged in Paragraphs 15, and 16, above, occurred on or about November 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, of the year 1938, and on or about December 5, 6, 7, 8, 16, 17, 18 and 19, of the year 1938, and on or about January 6 and 29, of the year 1939, and generally throughout the months of November, and December, 1938, and January, 1939; and said acts were participated in by supervisory employees of Respondent, including Oscar Busby, Rube Lloyd, Bill Robinson, J. T. Mize, Thomas Hammond, J. W. Hubbard, Joseph Hammond, and Louis T. Robinson.

18. By its activities described in Paragraphs 15 to 17, inclusive, above, and by each of them and by other acts, Respondent did dominate and interfere with the formation and administration of the Association and has contributed and is contributing financial and other support thereto, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8, subdivision (2) of the Act.

19. By its activities described in Paragraphs 15 to 17, inclusive, above, and by each of them and by other acts, the Respondents did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

20. Because of the unfair labor practices alleged herein on or about January 20, 1939, the union instituted a boycott of Respondent's products, and stationed pickets at Respondent's Corcoran plant, and said activities are being carried on at the present time.

21. On January 30, 1939, Respondent and the Associated Farmers, acting through the following-named individuals:

1. G. F. Archer
2. Roland Bailey
3. George Cutter
4. Roy Filcher
5. Ralph Gilkey
6. Raymond Gilkey
7. Walter Grisham
8. Louie Hammond
9. Phil Hammond
10. J. W. Hubbard
11. Slim Jones
12. Lloyd Liggett
13. Joe Mackey

14. Ralph Marshall
15. Forrest Riley
16. E. C. Salyers
17. Garland Salyers
18. Glen Sego
19. Ronald Squire
20. William Turner
21. Robert Wilbur
22. Brice Sherman
23. Russel Slaybough

and over 200 others did engage in an anti-Union demonstration, and did by means of force and violence, and threats of force and violence drive from the vicinity of the entrance to Respondent's plant at Corcoran Union pickets, and did threaten Union pickets and other Union members with physical violence if the Union engaged in further picketing, and did threaten Union pickets and Union members with physical violence if they remained in Corcoran, or engaged in further Union activities in Corcoran and vicinity.

22. Respondent and the Associated Farmers, acting through the individuals named in Paragraph 21, above, and over 200 other individuals whose names are not at this time known to the Regional Director, did by the acts alleged in Paragraph 21, above, and by each of them and by other acts, interfere with, restrain, coerce, and are interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in and are thereby engaging in un-

fair labor practices within the meaning of Section 8, subdivision (1) of the Act.

23. On or about January 20, 1939 and at all times thereafter Respondent and the Associated Farmers, acting directly and indirectly in the interest of Respondent, prepared and circulated among the employers of labor in and about Kings County, California, lists of employees of Respondent who are members of the Union and requested such employers of labor to refuse employment to members of the Union on account of their membership in and activities for the Union, and did thereby engage in and are now engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

24. On or about March 2, 1939 the Respondent, Associated Farmers, and the Exchange, for the purpose of discouraging membership in the Union, did discharge and cause to be discharged one Margaret A. Dunn from her position of employment with said Exchange for the reason that they suspected that said Margaret A. Dunn had engaged in and was engaging in union activities and thereby said Respondent, Associated Farmers, and Exchange engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

25. On or about March 2, 1939 the Associated Farmers and the Exchange, acting directly and indirectly in the interest of Respondent, for the purpose of discouraging membership in the Union, did discharge and cause to be discharged one Margaret A. Dunn from her position of employment with said

Exchange for the reason that they suspected that said Margaret A. Dunn had engaged in and was engaging in union activities and said Associated Farmers and Exchange thereby engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

26. By their activities described in Paragraphs 24 and 25 above and by each of them and by other acts Respondent, the Associated Farmers and the Exchange did interfere with, restrain and coerce and are interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

27. On or about March 14, 1939 and thereafter Respondent, Associated Farmers and the Exchange refused to reinstate or to permit the reinstatement of Margaret A. Dunn to her regular position of employment with said Exchange for the reason that said Margaret A. Dunn filed charges with the National Labor Relations Board, and by such acts said Respondent, Associated Farmers and Exchange did engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (4) of the Act.

28. On or about March 14, 1939 and thereafter the Associated Farmers and the Exchange, acting directly and indirectly in the interest of Respondent, refused to reinstate or to permit the reinstatement of Margaret A. Dunn to her regular position of em-

ployment with said Exchange for the reason that said Margaret A. Dunn filed charges with the National Labor Relations Board, and by such acts said Associated Farmers and Exchange did engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (4) of the Act.

29. By their activities described in Paragraphs 27 and 28 above and by each of them and by other acts, Respondents, the Associated Farmers and the Exchange did interfere with, restrain and coerce and are interfering with, restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

30. On and after March 14, 1939 Respondent, the Exchange, and the Associated Farmers, acting by and through its president, J. B. Boyett, threatened Margaret A. Dunn with Loss of employment of her husband, J. Ernest Dunn, and her son, Walter Dunn; with a boycott of the beauty parlor operated by her son and daughter, Jack and Margaret Dunn; and with a slanderous attack upon her character if she did not withdraw her charges before the National Labor Relations Board, and said Respondent, Exchange, and Associated Farmers did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

31. On and after March 14, 1939 the Exchange and the Associated Farmers, acting directly and in-

directly in the interest of Respondent, threatened Margaret A. Dunn with loss of employment of her husband, J. Ernest Dunn, and her son, Walter Dunn; with a boycott of the beauty parlor operated by her son and daughter, Jack and Margaret Dunn; and with a slanderous attack upon her character if she did not withdraw her charges before the National Labor Relations Board, and said Exchange and Associated Farmers did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

32. The aforesaid acts of Respondent, as set forth in paragraphs 6 to 19 inclusive, 21, 22, 23, 24, 26, 27, 29 and 30 above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), (3), and (4); and Section 2, subdivisions (6) and (7) of the Act.

33. The aforesaid acts of the Associated Farmers, as set forth in Paragraphs 21 to 31 inclusive, above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (4); and Section 2, subdivisions (6) and (7) of the Act.

34. The aforesaid acts of the Exchange, as set forth in Paragraphs 24 to 31 inclusive, above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (4); and Section 2, subdivisions (6) and (7) of the Act.

35. The aforesaid acts of Respondent, set forth in paragraphs 6 to 19 inclusive, 21, 22, 23, 24, 26, 27,

29 and 30 above, occurring in connection with the operations of Respondent described in Paragraphs 1 and 4 above, have a close, intimate and substantial relation to trade, traffic and commerce among several states and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

36. The aforesaid acts of the Associated Farmers set forth in Paragraphs 21 to 31 inclusive, above, occurring in connection with the operations of Respondent described in Paragraph 1 and 4 above, and occurring in connection with the operations of the Exchange described in Paragraph 3, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

37. The aforesaid acts of the Exchange set forth in paragraphs 24 to 31 inclusive, above, occurring in connection with the operations of the Exchange described in Paragraph 3 above, and occurring in connection with the operations of Respondent described in Paragraphs 1 and 4 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore the National Labor Relations Board on the 6th day of May, 1939 issues its Amended Complaint against J. G. Boswell Company, Associated Farmers of Kings County, Inc. and the Corcoran Telephone Exchange, Respondents herein.

AMENDED NOTICE OF HEARING

Please Take Notice that on the 18th day of May, 1939, in the American Legion Hall, Corcoran, California, at 9:30 A. M. in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 1—as amended, Article IV and Article II, Section 23, on the allegations set forth in the above Amended Complaint, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You Are Further Notified that you have the right to file with the Regional Director for the Twenty-first (21st) Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Amended Complaint, on or before the 16th day of May, 1939.

Enclosed for your information is a copy of the Rules and Regulations, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its Amended Complaint and its Amended Notice of Hearing, to be signed by the Regional Director for the Twenty-first (21st) Region on the 6th day of May, 1939.

[Seal] TOWNE NYLANDER,
Regional Director, 21st Region
National Labor Relations Board
808 U.S. Postoffice & Courthouse Bldg.
Los Angeles, California

United States of America

Before the National Labor Relations Board

Twenty-first Region

Case No. XXI-C-1025

In the Matter of

J. G. BOSWELL COMPANY, a Corporation;
ASSOCIATED FARMERS OF KINGS
COUNTY, INC., a Corporation; and COR-
CORAN TELEPHONE EXCHANGE, a Cor-
poration

and

COTTON PRODUCERS AND GRAIN MILL
WORKERS UNION, LOCAL 21798, A. F.
of L.

INTERMEDIATE REPORT

On November 21, 1938, the California State Council of Soap and Edible Oil Workers, A. F. of L., filed charges alleging violation of Section 8 (1) and (3) of the Act, on behalf of Cotton Producers and Grain Mill Workers, Local 21798, with the Twentieth Region at San Francisco, California, against the respondent Boswell Company. Pursuant to Article II, 37 (c) of the National Labor Relations Board Rules and Regulations—Series 1, as amended, the National Labor Relations Board, through its Secretary, on December 22, 1938, ordered this case transferred to and continued in the Twenty-first Region as Case No. XXI-C-1025.

On January 17, 1939, an amended charge was filed enlarging the 8 (3) charge and including an 8 (2) charge; on February 6, 1939, a second amended

charge was filed including a charge against the Associated Farmers of Kings County, California, and on March 4, 1939, a third amended charge was filed, enlarging on the 8 (1) and (3) charge formerly filed. All of the amended charges were filed with the Twenty-first Region of the National Labor Relations Board at Los Angeles, California, and upon the third amended charge the National Labor Relations Board, by Aaron W. Warner, Acting Regional Director for the Twenty-first Region, on the 4th day of March 1939, issued its complaint with notice of hearing against the J. G. Boswell Company, a corporation, and the Associated Farmers of Kings County, Inc., a corporation. A few days thereafter, upon appropriate order, the hearing on the complaint was indefinitely postponed. On March 14, 1939, Margaret A. Dunn filed a charge with the Twentieth Regional Office at San Francisco, charging the Corcoran Telephone Exchange with discriminatorily discharging her from her job. That charge was later withdrawn by Margaret A. Dunn.

On May 4, 1939, a fourth amended charge was filed in the office of the Twenty-first Region containing all the facts set forth in the third amended charge with the added item of a charge involving 8 (1), (3) and (4) against the Corcoran Telephone Exchange and the Associated Farmers of Kings County as well as the J. G. Boswell Company. On May 6, 1939, an amended complaint was issued by the Regional Director of the Twenty-first Region against the J. G. Boswell Company, Associated Farmers of Kings County and the Corcoran Telephone Exchange. The amended complaint, which will hereinafter be

more fully discussed, the charges and notice of hearing herein were duly served upon the respondents, the Union, and the J. G. Boswell Employees Association of Corcoran and Tipton.

The complaint against Boswell Company, Associated Farmers of Kings County, Inc., and the Corcoran Telephone Exchange, among other things, alleged: (a) That each of the companies above-mentioned are corporations; (b) that respondent, Boswell Company by its officers and agents, discouraged membership in Cotton Producers and Grain Mill Workers, Local 21798, A. F. of L., hereinafter called Local No. 21798, by inducing certain of its employees and others to spy upon and make reports to it regarding the activities of Local 21798 and its members; (c) By advising individual employees that the Union was no good and that the company would never recognize the Union; (d) That if the employees wanted to work for Boswell Company they had better not join the Union and that there was no place for union men in the plant; (e) That on or about November 13, 1938, respondent reduced the hourly wages of L. Ely from 40 cents to 35 cents per hour; (f) That on or about November 15, 1938, respondent locked out Boyd Ely and Walter Winslow by shutting down the oil mill where they were employed; and that the respondent failed to reemploy each of said employees when the oil mill resumed operations on or about January 6, 1939; and on November 17 discharged W. R. Johnson,¹ Stephen J. Griffin and Elmer Eller because they joined and assisted the Union; (g) That

¹Wherever the name Johnson appears, it should be Johnston.

on or about November 18, 1938, respondent, acting through its officers and agents, did encourage and permit an anti-union demonstration at its plant, and with full knowledge did permit employees and supervisory employees to drive out by means of force and threats of force and violence from their work at the plant in *Corcoran County*, George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, E. C. Powell, L. A. Spear, and H. M. Wingo, and that on November 19, 1938, respondent refused and failed to reinstate said employees to their former positions; (h) that on or about January 20, 1939, respondent discharged Eugene Clark Ely; (i) all of the above-mentioned employees were discharged and the wages of L. E. Ely were reduced from 40 to 35 cents per hour for the reason that said employees joined and assisted in the affairs of Local No. 21798; (j) that by the above acts alleged, the respondent did interfere with, restrain, and coerce, and is interfering with, restraining and coercing its Corcoran employees in the exercise of the rights guaranteed in Section 7 of the Act, and did engage in, and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act; (k) that respondent, on or about November 18, 1938, by its officers and agents while engaged at its Corcoran plant did form and cause to be formed at its Corcoran plant a labor organization known as the J. G. Boswell Employees Association of Corcoran and Tipton; (l) that respondent dominated and interfered with, and is now dominating and interfering with the administration of the J. G. Boswell Employees Association of Corcoran and Tipton, here-

inafter called the Independent, by permitting the Independent to hold meetings at its Corcoran plant; by threatening employees with loss of employment if they did not become members of the Independent; and by soliciting employees during working hours to become members thereof; (m) that by such activities, respondent did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act; (n) that on January 30, 1939, respondent and the Associated Farmers of Kings County, Inc., acting through certain named individuals and others unnamed did engage in anti-union demonstration and did, by means of force and violence and threats of force and violence, drive from the vicinity of the entrance to the respondent's Corcoran plant union pickets and did threaten union pickets and other union members with physical injury if the Union engaged in further picketing; (o) that on or about March 2, 1939, respondents, Boswell Company and Associated Farmers caused the Corcoran Telephone Exchange to discharge Margaret A. Dunn for the purpose of discouraging membership in the Union; (p) that on or about March 14, 1939, and at all times thereafter, respondent, Corcoran Telephone Exchange, refused to reinstate Margaret A. Dunn to her regular position with said Exchange because of pressure brought to bear upon it by the respondents, Boswell Company and Associated Farmers; (q) that on or about March 14, 1939, respondent, Boswell Company, Associated Farmers of Kings County, and Corcoran Telephone Exchange, acting through the president of the Associated Farm-

ers, did threaten Margaret A. Dunn with loss of employment of her husband, J. Earnest Dunn and her son Walter Dunn with a boycott of a beauty parlor operated by her son and daughter, Jack and Margaret Dunn, and with slanderous attack upon her character if she did not withdraw her charge which she had filed with the National Labor Relations Board; (r) that by said acts above enumerated, respondents Boswell Company, Corcoran Telephone Exchange and Associated Farmers of Kings County, Inc., did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (4) of the Act; (s) that all of the afore-said acts as set forth above constitute unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3) and (4) and Section 2 (6) and (7) of the National Labor Relations Act.¹

The respondent, Boswell Company, filed an answer admitting some of the allegations of the complaint but alleged that W. R. Johnson, Stephen A. Griffin and Elmer Eller were employed in seasonal work; that there was a very short ginning season in 1938 and that because of curtailment of ginning operations on or about November 17, 1938, the said three

¹The National Labor Relations Act is herein referred to as the Act; the National Labor Relations Board as the Board; Cotton Producers and Grain Mill Workers, Local 21798, A. F. of L., as Local 21798; J. G. Boswell Employees Association of Corcoran and Tipton, as the Independent; J. G. Boswell Company as Boswell Company; Associated Farmers of Kings County, Inc., a corporation, as Associated Farmers; and the Corcoran Telephone Exchange, a corporation as the Exchange.

employees were laid off solely and entirely due to seasonal decline in operations; that Eugene Clark Ely left his employment about January 30, 1939, of his own free will without notice to respondent and denied that respondent violated any provision of the National Labor Relations Act.

The Associated Farmers of Kings County, Inc., a California corporation, filed its answer to the amended complaint, first admitting some of the allegations contained therein, but denied knowledge as to the matters alleged in Paragraph 1 of said complaint and specifically denied Paragraph 2 of said complaint and that it is without knowledge as to the matters alleged in Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of said complaint and denied or alleged that it is without knowledge of any of the other facts stated in the amended complaint, and further denied that the Associated Farmers have in any way violated the National Labor Relations Act.

The Corcoran Telephone Exchange filed its answer admitting some of the allegations contained in the complaint but denied it had violated any provision of the National Labor Relations Act, and further denied knowledge of any of the matters alleged in Paragraph 8 of said amended complaint.

The undersigned, as duly designated Trial Examiner of the National Labor Relations Board, conducted a hearing from May 17 to June 16, 1939, both inclusive, at Corcoran, California. All parties were afforded an opportunity to participate in the hearing, to call, examine, cross-examine witnesses and to introduce evidence.

The undersigned gave the J. G. Boswell Employees Association of Corcoran and Tipton the privilege of securing counsel. Samuel Brenes, treasurer of the J. G. Boswell Employees Association of Corcoran and Tipton, hereinafter referred to as the Independent, advised the undersigned on the record that the Independent did not desire to intervene or to retain counsel.

Before the commencement of the hearing the respondents Boswell Company, Associated Farmers and the Exchange filed written motions with the Regional Director of the Twenty-first Region to dismiss the action against said respondents.

At the beginning of the hearing counsel for respondents renewed the written motions and moved that the proceedings be dismissed. The undersigned denied the motions.

During the course of the hearing Board's counsel moved to amend paragraph 8 of the complaint to read: "(1) On or about March 30, 1938, respondent discharged James W. Gilmore and on or about July 1, 1938, refused to reinstate Gilmore because he attempted to organize the employees of the company; (2) On November 17, 1938, respondent discharged W. R. Johnson, Steven J. Griffen, and Elmer Eller; (3) On or about January 30, 1939, respondent discharged Eugene Clark Ely." Board's counsel stated that the amended charge contains the names above-mentioned but inadvertently were left out of the complaint. Over the objection of the respondents' counsel the undersigned granted the motions, giving respondents five

(5) days to answer the new allegations as to James W. Gilmore, W. R. Johnson, Steven J. Griffen and Elmer Eller, and permitted respondents to amend their answer to meet the new charges. However, the respondents waived the right of the five (5) days as to W. R. Johnson, Steven J. Griffen, and Elmer Eller, and amended their answers to meet the new charges.

During the hearing counsel for the Exchange; first, moved to strike testimony from the record on page 2283, line 8, to page 2286, line 6, of the transcript of June 10, 1939; second, to strike all testimony adduced on behalf of the Board in support of the complaint against the Exchange upon the ground that the Board had no jurisdiction over that business or corporation in that it had not been shown that said company is engaged in interstate commerce. The undersigned reserved ruling on both motions. Those motions are now denied.

At the conclusion of the Board's case, Board's counsel moved to amend the complaint to conform to proof adduced in so far as dates and misspelling of names. Such amendment in no way changed or enlarged the allegations set forth in the complaint. The motion was granted with the consent of all parties.

At the conclusion of the Board's case the undersigned granted permission to respondent's counsel, if he so desired, time for preparation of respondents' defense. Counsel for respondents advised the undersigned that no time was needed and that the respondents were ready to proceed.

At the conclusion of the hearing the undersigned granted leave to all parties to file briefs with the Trial Examiner within ten (10) days from the date of receiving the transcript of the testimony,² and offered an opportunity for oral argument before the undersigned. Counsel appearing for the various parties waived oral argument. None of said parties have filed briefs with the undersigned.

Upon the record thus made, and from his observation of the witnesses, and examination of the exhibits, the undersigned makes, in addition to the above, the following specific findings of fact:

FINDINGS OF FACT

I. Respondent's Business

1. The J. G. Boswell Company is a corporation organized under and existing by virtue of the laws of the State of California since October 13, 1925. It is authorized to transact business in the State of Arizona and is engaged both in the States of Arizona and California in the business of growing and financing the growing of cotton, ginning and baling cotton, extracting cotton seed oil from cotton seed, selling and distributing cotton, cotton

²The official court reporter in transcribing the testimony of the last day of the hearing used the term "from the date of receiving of the Intermediate Report" when he should have used "from the date of receiving the transcript of testimony." The undersigned wired respondents' counsel of that fact and inquired as to whether or not respondents had been misled. Various counsel for the respondents replied they were not misled and did not wish to file briefs with Trial Examiner.

seed oil, cotton seed cake and meal, and purchasing, feeding and selling cattle. The Company owns and operates seven cotton gins, a cotton seed oil mill and a cattle feed yard in the State of California, and 10 gins and a cotton seed oil mill in the State of Arizona. At Corcoran, California, respondent operates six cotton gins, a cotton seed oil mill and a cattle feed yard.

2. During the fiscal year from July 1, 1937 to June 30, 1938, the respondent engaged in operations as follows:

Cotton ginned and baled in Arizona.....	60,055 bales
Cotton ginned and baled in California.....	57,478 bales

Total	117,533 bales
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Cotton seed crushed and processed in Calif.....	17,220. tons
Cotton seed crushed and processed in Arizona....	23,877.875 tons

Total	41,097.875 tons
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Cattle purchased in Texas.....	408 head
Cattle purchased in Arizona	1,771 head
Cattle purchased in California.....	1,146 head

Total	3,325 head
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Cattle sold in California	2,407 head
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The remaining cattle were not sold by respondent during this period.

At the Corcoran plant during the same period respondent engaged in the following operations:

Cotton ginned	68,355,839 pounds
Cotton seed crushed and processed.....	34,440,069 pounds
Cotton baled—47,111 bales, of which 40,138 were owned by respondent and 6,873 bales were owned by others.	

Linters bale—Total 5,096 bales.

Cotton seed oil produced—714,958 gallons.

Cotton seed cake produced—approximately 10,000 tons.

3. In baling the cotton respondent used 52,206 patterns, of which the jute came from India and the steel bands from Alabama.

4. All of the cotton and cotton seed handled at the Corcoran plant was purchased or grown by the respondent in the State of California. All cattle feed operations in California of respondent were carried on at the Corcoran plant, except as to certain cattle which were fed on pasture. Certain cattle of other parties were fed by respondent in Arizona at Litchfield Station, under a contractual agreement for the feeding thereof.

5. During the same period the output of respondent's Corcoran plant was disposed of in the following manner: 40,138 bales of cotton and 862 linters were shipped out of the State of California by respondent by means of the Atchison Topeka and Santa Fe Railway Company, and the following steamship companies; Furness (Pacific) Ltd., Dollar Line (now American President Lines); General Steamship Corporation; Norton Lilly; Williams Diamond Co.; The Inter-Ocean Steamship Corporation; American Hawaiian; N.Y.K.; Mitsui Ltd.; Salen Line; Swayne Hoyt; 650 bales of linters were sold and shipped to points within the State of California and 3,584 bales of linters were sold f.o.b. Corcoran, California. Seven hundred fourteen thousand nine hundred fifty-eight gallons of cotton seed oil were sold to the Swift and Company Refinery, Vernon, California. Approximately

60 tons of cotton seed cake were shipped outside the State of California and the remainder were sold or consumed within said State.

6. The respondent, Boswell Company, owns, controls and operates a financing corporation known as the J. G. Boswell Farm Loan Company, herein-after called the Loan Company. The Loan Company finances various farmers in that community during the growing season. The farmer, when making an application for a loan, submits to the Loan Company an estimate of the cost of growing and harvesting his crops including the approximate number of employees needed and the cost of such hire. When the loan is approved the borrower executes a chattel mortgage on the crops to the Boswell Company. At various intervals the pay roll, as well as the other expenses incurred during said period, are submitted to the Loan Company and the Loan Company in turn pays the employees of the farmer as well as other expenses incurred by him during said period. When the crop is harvested it is delivered to the Boswell Company at a certain designated price and an accounting is had with the farmer who borrowed the money from the Loan Company. The Boswell Company also controls, operates and manages a number of farm ranches upon which are placed foremen who direct the operations of said ranch for said Company. Respondent controls the water supply and charges the farmer \$8 per acre for each irrigation or watering.

The Associated Farmers of Kings County, Inc.

7. The Associated Farmers of Kings County, Inc., was organized between approximately September 8 and October 18, 1938. It received its articles of incorporation from the Secretary of State of California on October 18, 1938, and since that date and now is a non-profit corporation. One of the primary purposes of the incorporation of the Associated Farmers of Kings County, Inc., hereinafter called the Associated Farmers, was to combat organized labor. It is one of the approximately 43 units which go to make up the Associated Farmers of California, a State organization. The organization, the purpose thereof and its connection with the respondent, Boswell Company, as well as the part it played in the labor dispute between the J. G. Boswell Company and the Cotton Producers and Grain Mill Workers Union, Local 21798, will hereinafter be fully discussed.

The Corcoran Telephone Exchange

8. The Corcoran Telephone Exchange, hereinafter called the Exchange, is a corporation organized under, and existing by virtue of the laws of the State of California since 1923. C. H. Glenn, who is its duly elected president, is also the principal stockholder. The Exchange is engaged in the business of furnishing local and long distance communication service throughout Kings County. In the operation of its system the respondent maintains connections with the Pacific Telephone and Tele-

graph Company³ of Hanford, California. The Pacific Telephone and Telegraph Company, by means of cables or wires plugged into the main switchboard of the Exchange at its office in Corcoran, California, and for such connection and the source thereto allows the Exchange 30 per cent of all outgoing long distance telephone calls. In addition to furnishing local service, the Exchange, one of the respondents herein, as an integral part of the Pacific Telephone and Telegraph Company, fur-

³During the past year ending February 15, 1938, the Pacific Telephone and Telegraph Company, with a branch at *Hanover*, California, owned and operated 1,853,229 telephones in service. The pay rolls for 1938 were \$54,375,235. As of December 31, 1938, there were also 282,922 telephones served by 309 other companies with which its toll and long distances lines connected. All of the telephones operated on the Pacific Coast by the Pacific Telephone and Telegraph Company and those independently owned and operated by connected companies for complete connection with the Bell System, of which the Pacific Telephone and Telegraph Company is a constituent part. At the end of the year the Bell System telephones totaled in round figures, 15,761,000 and they are inter-connected to 4,124,000 served by connected companies, all connected by wire or radio-telephony with 17,915 telephones in other countries and continents. Ninety-three per cent of the world's 40,600,000 telephones are now inter-connectable and the Pacific Coast has promptly available this world-wide service. The Pacific Telephone and Telegraph Company maintains branch exchanges in several different States. See Report of Directors of the Pacific Telephone and Telegraph Company to the Shareholders, dated February 15, 1939, Board Exhibit No. 20.

nishes its subscribers with long distance telephone service to all parts of the United States. It maintains the only telephone service in Corcoran and without its connection with the Pacific Telephone and Telegraph Company long distance service to and from that community would be shut off.

9. The total mileage of all lines and cables operated by the Exchange is 139.9 miles. All new equipment and material purchased by the Exchange during the past fiscal year amounted to approximately \$3,500. Most of the material was purchased from the Graybar Electric Company at San Francisco. The cables which were used to replace the old cables were shipped from Illinois to the Graybar Electric Company of San Francisco and in turn shipped by said company to the Exchange at Corcoran.

10. During the period from December 21, 1937, to December 21, 1938, the gross income of the Exchange was \$15,897.39. Of that amount the taxes collected on toll calls amounted to \$937.35. The tax is collected by the respondent as agent for the taxation authorities. The out-of-town calls paid in through the Hanford Company amounted to \$5,248.48. Of that sum long distance calls outside of the State amounted to \$177.13. During the period in question the total number of calls which went through the Exchange were 35,588 and of that number 77 were long distance calls to points outside the State of California. There were several calls to points in the States of Texas, Arizona, New Mexico, and Nevada. The Telephone Ex-

change is the only telephone company operating in Corcoran, California, and without its connection with the Pacific Telephone and Telegraph Company, long distance telephone calls from Corcoran would be impossible. Some of the larger subscribers to the Exchange are the J. G. Boswell Company, the Aitcheson, Topeka and Santa Fe Railroad, and the Western Union Company.

III. The Organizations Involved.

11. The Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L. and the J. G. Boswell Employees Association of Corcoran and Tipton, an independent organization, are both labor organizations within the meaning of the Act. The Cotton Producers and Grain Mill Workers Union of which Local 21798, A. F. of L. is an affiliate, admits to membership employees of other companies doing like and similar work, while the J. G. Boswell Employees Association of Corcoran and Tipton only admit to membership the employees of those two plants owned and operated by respondent.

IV. The Unfair Labor Practices

A. Intimidation, restraint and coercion

12. The operations of respondent Boswell are seasonal and dependent wholly on the volume of cotton produced by the farmers who are its customers. At Corcoran it is in competition with another company, San Joaquin Ginning Company which engages in the same general type of operations.

13. The season usually begins in late September or early October of each year, with the opening of the cotton picking. At this time the gins are started and thereafter run more or less continuously until the cotton picking is completed. In heavy seasons such as was experienced in 1937-1938, the gins run 24 hours with two shifts of 12 hours each. In lighter seasons such as 1938-1939, which in volume was only about 25 per cent of the 1937-1938 season, only one shift of 12 hours is operated.

14. In 1938, the first gin was started September 30. Thereafter only four of the six gins operated, one of them shutting down November 25, one on December 3, one on December 5 with intermittent operations until December 30 and the fourth running continuously until December 31 and intermittently until January 24.

15. The oil mill started October 24, ran until November 13, after which it operated 8 days in January 1939, 3 days in February, 4 days from April 29 to May 2 and at the close of the hearing on June 16, had operated 2 days in June.

16. With these fluctuations in operations, there was a paralleling fluctuation in employment, the low point being habitually struck in the middle of April each year.

17. The peak of employment is reached in November of each year. In the 1937-1938 season, the peak was 183 employees on November 18, 1937 against a low of 45 on April 14, 1938. In the 1938-1939 season, the peak was 84 on November 17, 1938 against a low of 55 on April 22, 1939.

18. The employment history of the older or regular employees of respondent reflects the fact that, notwithstanding the numerous intermittent lay-offs, they were still regarded as Boswell employees to the extent that when an operation was about to start up, the men usually employed on the jobs involved were informed by various methods, including personal calls by Gordon Hammond or his messengers and told to report. In other instances, the men themselves kept in touch with the office, making inquiries at about the time the mill or gin would ordinarily start and were put to work. In any event, there is no evidence that any of the seasonal lay-offs were regarded as terminations of employment.

19. In January of 1938, James W. Gilmore, an employee of respondent, Boswell Company, began talking to his fellow employees about the formation of a union. Gilmore testified that he talked to a number of the employees, all of whom he thought were known to him to be in favor of a union. Some of those to whom he talked were Lonnie Spear, John Andrade, Dick White and a man by the name of Workman, employees of respondent, but did not have any of them sign membership cards in the Union. White and Workman later became members of the Independent. Gilmore was laid off from work on or about March 30, 1938. The union activities of Gilmore and his lay-off will be hereinafter more fully discussed.

20. O. L. Farr, an employee of the respondent Boswell Company, on March 15, 1938, in the pres-

ence of his brother, who at that time was president of a local union in Bakersfield, California, told E. F. Prior, secretary-treasurer of the California State Council of Edible Oil Workers, affiliated with the A. F. of L., that in his opinion the employees of the Boswell Company were interested in organizing a union. Farr gave the names of the officials of the respondent to Prior. Prior went to the Boswell plant, gave his card to the PBX operator and requested an interview with Louis T. Robinson, general manager, or Gordon L. Hammond, plant manager. Hammond could not be found about the plant and Prior left without seeing either Hammond or Robinson.

21. About a week or two following Prior's visit to the plant, the oil mill of respondent ceased operations. No further organizational work was attempted until July 6, 1938.

22. On July 6, 1938, Prior returned to Corcoran and met O. L. Farr, an employee of respondent, Boswell Company, who gave him a list of some 30 names of respondent's employees, who were interested in union affairs. Prior told Farr he would call a meeting of said employees for July 13, 1938. Such a meeting was held on July 13 in the American Legion Hall at Corcoran and was attended by Farr and other interested employees, as well as Frank Gonders, Jack Owens and Clyde Sitton, a nephew of Gordon L. Hammond, plant manager of respondent. Prior explained the purpose of the meeting to those present. Gonders, an old and faithful employee of respondent who later became a

member of the Independent, told Prior, in the presence of others, that the employees of the Boswell Company were well satisfied with 35 and 50 cents per hour, and that they really wanted no organization in the plant. Those six or eight who were interested in the organization signed membership cards at that meeting. James W. Gilmore, an employee of respondent and who in January 1938 began talking with a number of the employees of the respondent about organizing a union, told Prior that he had not been recalled to his job in the oil mill when said mill started operations on July 1, 1938, because of his union activities. Gilmore advised Prior of some of the anti-union activities of Gordon L. Hammond, plant manager, including a conversation he had with Hammond about June 1, 1938, at which time Hammond said to Gilmore "I thought you knew quite a bit about threatening to start a union" and asked Gilmore "if he had them all signed up."

23. On July 17, 1938, Prior filed charges with the Regional Office of the Board at Los Angeles, California, alleging that respondent, Boswell Company, had violated Section 8 (1) of the Act. No further organizational work was attempted until September 2, 1938, at which time Prior went to the home of Farr and talked to him in the presence of R. K. Martin and H. M. Wingo, employees of the respondent company. At said meeting the above-named employees turned over to Prior a number of applications for membership in the organi-

zation, which they had secured from employees of the respondent, Boswell Company. On September 2, after Prior talked to Farr and the others, he went to the Boswell plant and talked to Lewis T. Robinson, general manager, Gordon L. Hammond, plant manager, and William W. Boswell, a brother of J. G. Boswell and in charge of cattle, etc., for respondent. Prior told Robinson and the others that the Union had filed a charge with the Board and explained the policies of the Union to them. Robinson told Prior that if he were organizing he would endeavor to organize keymen of the plant and not just a few more or less radical, ignorant and casual workers and part-time workers. Prior told Robinson that he would be surprised to know that a number of men that had been steadily on his pay roll were interested in the organization.

24. Robinson, in giving his version of his conversation with Prior, said that he told Prior the company had no objection to any of its men joining any union that they saw fit but that they were faced with a serious unemployment situation; that because of the floods and *cost* control they would not have a run of more than 10,000 bales of cotton and he hoped that Prior would not do anything that would aggravate the situation. Robinson said that Prior agreed to cooperate with them and Robinson further said that he told Mr. Prior that Mr. Gilmore was not even employed by them, and if he were going to try to organize a union he would not try to build it around Gilmore, he would go out in

the plant and get some of the regular men. From Robinson's own statement he brought Gilmore's name into the conversation and said that he had heard that Prior was working with Gilmore who was not then employed by the respondent and had not been since the spring of 1938. In view of Robinson's own admission and the undersigned's observation of both Robinson and Prior the undersigned believes that Prior's version of the conversation is correct. Prior, at the request of the Regional Office at San Francisco withdrew the 8 (1) charge.

25. On or about October 7, 1938, R. K. Martin, H. M. Wingo and George Andrade told Prior that the oil mill was shut down on September 27 and they were informed that Andrade, Martin, Boyd Ely and Farr would not be reemployed at the J. G. Boswell plant. The following day, October 8, 1938, Prior went to the office building of the J. G. Boswell plant and had a conversation with Gordon L. Hammond, regarding the employment status of the above-mentioned men. Prior told Hammond that the oil mills had been shut down and the men laid off and would not be reemployed, because of their activities on behalf of the Union. He explained to Hammond that there might be some misunderstanding because of rumors floating about on both sides. Hammond told Prior that the men in question were not reemployed for the reason that no part of the plant in which they had worked or had experience in was operating, but that had these men

appeared for employment they would have taken them back. Prior left, picked up Martin and drove to the home of Andrade, while there, a brother of Hammond drove up and notified Andrade to report to work that afternoon. On October 11, Prior received notice from Martin that he, Martin, had been recalled to work.

26. Hammond, regarding said conversation, stated that he told Prior it was not true that the respondent did not intend to reemploy the men in question and that as soon as the company had work for them they would be recalled to work.

27. On October 15 a meeting of all of those who had signed application cards for membership in Local 21798 was held at R. K. Martin's residence in Corcoran.

28. On October 26, 1938, O. L. Farr, H. N. Wingo, George J. Andrade, R. K. Martin, L. A. Spear, Peter Galvan and Emanuel Escabedo signed an application for a charter for a local of the Union.

29. The application for a charter was approved by the A. F. of L. and at a meeting on November 5, 1938, at the home of O. L. Farr of Corcoran, the charter of Local 21798 was installed. At the same meeting L. A. (Lonnie) Spear was elected president of Local 21798. O. L. Farr was elected vice president and R. K. Martin, secretary and treasurer. A board of directors was elected and the officers installed.

B. The discriminatory discharges

30. James W. Gilmore first began work with the respondent in July 1928. He worked on and off at different jobs for the respondent until 1936. From 1936 until March 19, 1938, Gilmore worked for the greater part of the time in the oil mill department and his work was steady except for short period of lay offs. Sometimes when the mill shut down Gilmore would be placed at painting or doing other jobs about the factory until the mill reopened. As heretofore stated, in January 1938 Gilmore began talking with a number of the employees in the respondent's plant about the organization of a union. On March 19, 1938, Gilmore was laid off. He was recalled to work by respondent on the 2nd of May and was again laid off on May 17, 1938. Between March 19 and during the period from May 2 to May 17, Gilmore visited the respondent's plant at Corcoran on various occasions and continued to talk to the employees about the organization of a union. About June 1, 1938, during one of Gilmore's visits to the plant to talk to the employees about unions he met Gordon T. Hammond, plant manager, at the south end of the mill. Hammond spoke to Gilmore and Gilmore asked Hammond what he knew. Hammond replied that he knew as much as Gilmore, to which Gilmore replied: "That is practically nothing," to which Hammond said: "I thought you knew quite a bit about threatening to start a union." Gilmore asked him the following question: "Who said anything about

me starting a union?" Hammond said, "Things get around." Hammond then asked Gilmore if he had them all signed up. Gilmore told him that he had about half of the employees signed up and that he would get all of them before he got through. Hammond said, "I think you will if you keep sneaking around." Hammond denied that he had had such a conversation with Gilmore in June, or at any other time. From his observation of the witnesses and considering all of the testimony of Gilmore and Hammond, the undersigned believes the testimony of Gilmore.

31. On the first of July 1938, the mill reopened but Gilmore was not recalled to work. He applied to Julius Hammond, oil mill foreman, and was told he had nothing for him. During the first half of July after the mill had reopened Gilmore met Hammond at the plant between the main office and the scale office. Gilmore asked Hammond if his work had been satisfactory and Hammond agreed that it had been. Gilmore asked Hammond why he had not been put back to work. Hammond told Gilmore that there was no work for him to do. Gilmore asked Hammond if he was not called back to work because of the union. Hammond replied, "I would not exactly say that was it" and said "I have heard you were but I don't believe everything I hear." Hammond denied that he had had such a conversation with Gilmore. Hammond admitted however that he did have a conversation with Gilmore near the mill, but said that the conversation was about

the 17th of May 1938. Hammond, in giving his version of the conversation, which he claimed was in May, said that Gilmore told him that he had a job in Oregon at \$6 a day and that he was going out there and take that job. Gilmore on cross-examination specifically denied that he had made such a statement to Hammond. Gilmore testified he did not have a job in Oregon and that except for a short time during which he visited his brother in Oregon he had been in Corcoran at all times. In fact the undisputed testimony of Gilmore shows that he worked for some time during the summer of 1938 on a new high school building under construction at that time in Corcoran.

32. It will be remembered, as hereinabove stated, Robinson, on September 2, 1938, according to his own admission, brought Gilmore's name into a conversation he was having at that time with Prior. He told Prior that he had heard that Prior was working with Gilmore in attempting to organize the respondent's employees and that Gilmore was not employed by the respondent and had not been since the spring of 1938, and further stated if he were going to try to organize a union he would not try to build it around Gilmore; he would go out in the plant and get some of the regular men.

33. There is no question but that Gilmore's union activity was known in 1938. The conversation with Gordon L. Hammond about June 1 is in point as is the testimony of Lewis T. Robinson.

34. The fact that Gilmore was an employee of long standing—and his turn-down by John Ham-

mond about July 1—puts him in the position of having applied and been refused—and the Robinson statement evidences his status of *persona non grata*, the only thing against him being his union activities—for nothing else was shown.

35. The undersigned finds that Gilmore was not laid off on March 19 or May 17, 1938, because of his union activities, but does find that Gilmore was refused reinstatement to his former position with the respondent on July 1, 1938 when the oil mill reopened, because of his union activities.

36. In the latter part of August 1938, during a conversation between Gordon L. Hammond⁴ and O. L. Farr, an employee of respondent and a member of Local No. 21798, which took place in Mr. Hammond's office, Hammond asked Farr if he were a member of the Union and said that he heard that he was such a member and was carrying a receipt book on the job, signing up members and was active in union affairs. Farr denied to him that such was a fact. Hammond said, "Well, you can hear most anything. I just wanted to know" and asked Farr if he was satisfied with his working conditions. Farr told Hammond he was not satisfied to work 84 hours a week.

37. Hammond, while on the witness stand, admitted that he did have such a conversation with Farr in August or the first part of September 1938, but in giving his version of the conversation with

⁴Above described as plant manager for the respondent, Boswell Company.

Farr said that he told Farr one Andrew Galvan, a Mexican employed by the respondent, told him that Farr had asked him (Galvan) and Ignacio Galvan to sign a paper which Farr said came from the office; that if they would sign said paper they could not be laid off, and that they would get more money. Hammond denied that during said conversation anything was said to Farr regarding working conditions. The undersigned believes the testimony of Farr.

38. In the month of September 1938, during a conversation between O. L. Farr and Tom Hammond, foreman of the gin mill, which took place between the seed house and oil mill, Hammond asked Farr if he were a member of the Union. Farr told Hammond that he was and Hammond asked Farr for the names of the other members of Local 21798. Farr told Hammond that he did not give out that information and that union activities were not discussed on the job. Hammond told Farr that if he wanted to belong to the Union, he, Farr, should go where there was a union; and that the company did not want a union there. Farr's testimony regarding his conversation in September with Hammond was not denied.

39. Just before the oil mill shut down in September 1938, Joe Hammond⁵ came to where Farr

⁵Joe Hammond, foreman of the oil mill who told the men what to do while at work and told them when they were laid off in slack periods and when to return to work and is therefore a supervisory employee.

was working in the linter room of the oil mill and entered into a conversation with Farr. The conversation by questions and answers is as follows:

Q. (By Mr. Mouritsen) Now, returning to the conversation, will you state the conversation that you had with Joe Hammond?

A. Joe came and he asked me—he said, “What are you and Martin going to do when the mill shuts down?”

And Farr said

“I guess I will work in the gins as I always have.”

He said, “I can’t use you any longer in the mill.”

And Farr said, “Well, since when,” and he says, “from now on when the mill shuts down.”

And Farr said, “I always have worked.”

He said, “But you never belonged to the union before this time.”

Farr’s testimony was not denied.

40. On the 24th or 25th of September 1938, during a conversation in the expeller room of the respondent’s plant between R. K. Martin, an employee of the respondent and a member of Local 21798 and Tom Hammond, Martin asked Hammond if he had told anybody that he (Martin) was going to organize the respondent’s plant. Hammond told Martin that he had heard that statement but would not disclose to Martin who had given such information. Martin told Hammond that he had not figured on organizing the plant but believed that it

could be done. According to Martin, Hammond said, "Well, if the union comes in here, we will clean it up and lock it up and shut the plant," and that "Gordon Hammond has a letter from J. G. Boswell stating that if the union did come to lock up the plant" and further that "He did not blame anyone for refusing to have anything to do with any organization that Gilmore was interested in." Gordon L. Hammond denied he received such a letter from J. G. Boswell.

41. During a conversation in the seed house of respondent's plant during working hours on the 6th or 7th of November between Steven Griffin, a member of Local 21798, and Tom Hammond in the presence of Jack Ely and Ray Fallon, employees of the respondent, Tom Hammond asked Griffin if he had joined the Union. Griffin told him that he did join the Union. Hammond asked Griffin, if he did not think that the work with the company were good enough for him. Griffin said that it was good enough for Hammond but not for a man working at ordinary wages. Such a man could not make a living at it. Hammond said, "This union is the worst thing that ever has been here," and advised Griffin to stay out of it.

42. The respondent, even though Tom and George Hammond were still employed by respondent at the time of the hearing, did not produce as witnesses either Joe or Tom Hammond to deny conversations alleged to have taken place between them and O. L. Farr, R. K. Martin and Steven J.

Griffin. Neither did respondent produce Kelley Hammond, Julius Hammond, Yankee Roberson or Bill Robinson to deny conversations had with some of the employees regarding union matters. The respondent, in lieu thereof, called Lewis T. Robinson, general manager, and Gordon L. Hammond, plant manager, to testify that the above-named individuals were not given the title of foreman and could not speak for the company.⁶

43. There is no magic in the title of foreman or the duties he performs. The fact that the respondent contends the title of foreman has not been given to Tom, Joe, Julius and Kelley Hammond, Yankee Roberson and Bill Robinson and that they are not authorized to speak for the company is not conclusive. The nature of their work as associated with other employees within their respective departments is a determining factor of their status. They are paid on a monthly basis at a higher rate of pay while the employees within their respective departments work on an hourly basis. The employees take their working instructions from Tom, Joe, Julius and Kelley Hammond, Yankee Roberson and Bill Robinson. They tell employees when they are laid off in slack periods, when to return to work, and generally supervise the employees during working periods. They are, in fact, as far as the employees are concerned, the bosses of their respective departments and are, therefore, responsible super-

⁶The Serrick Corporation, Case No. 7258, District of Columbia.

visory employees of the respondent, and the undersigned so finds.

44. L. E. Ely began his employment with the respondent in either September or October 1936 on the hay cutter at 30 cents an hour. He was laid off after working about 2 months and returned to work around the gins in September 1937 at 35 cents per hour. He was laid off and returned to work in November 1937 as press helper on gin No. 4 at 35 cents an hour. He worked on and off until October 1938 at which time he went back in as a press helper. Joe Briley, press manager or head pressman, was taken ill and Ely was put in his job as head pressman at 40 cents an hour. On November 11, 1938, Ely joined Local 21798. Ely continued as head pressman for about 7 days, at which time Briley returned to his work. Ely was returned to his job as press helper and reduced from 40 to 35 cents an hour. On Saturday when Ely received his pay check and noticed that he was receiving 35 cents instead of 40 cents an hour he asked Tom Hammond if he knew "Why his rate of pay was changed from 40 to 35 cents per hour." Hammond told him that he did not know but at the request of Ely he said he would try to find out and Hammond stated that maybe the union had something to do with it and then said, "Maybe you should get your committee together and go up to the office and see if they could not find out something about it." At the time Hammond left Ely, Hammond said, "Well, I will see about why your

wages was cut, and let you know." Ely's testimony was not denied. On November 5, 1938, Ely received an injury to his thumb while cutting cotton at the press. He continued to work and by November 9 infection in the thumb had set in. He visited Dr. Edmonds' office in Corcoran and again on November 16 went to the doctor's office. On the visit of November 16th to the doctor's office the doctor asked him if he were still working. Ely told the doctor that he was working, whereupon the doctor told him to go home and not to work any more until he was released by him. On the morning of the 16th of November Ely reported to Tom Hammond and explained his injury and his doctor's instructions. Hammond told Ely to go home. Ely has not been recalled to his work by the respondent even though he has fully recovered from his injury. The respondent stated that Ely was not recalled to work because of slack periods, but on cross-examination admitted that the usual practice of respondent in cases of lay-offs has been, and was at the time of the hearing, that the individual employees laid off would be advised before they left the plant that they would be notified when needed. Ely was never notified to return to work.

45. On November 28, 1938, the respondent, through its general manager, Lewis T. Robinson, sent a registered letter to L. E. Ely advising him that gin No. 4, upon which Ely worked, was closed down on November 26 at 5 p. m. and that his employment by the company was terminated at that

time. It was not the practice to lay off an individual and later send him a registered letter informing him that his employment was terminated. In fact never before, had such a letter been sent out to a laid-off employee. The only explanation the respondent gave for sending the registered letter to Ely was that, he was not there at the plant to receive notice in person. The undersigned finds that at the time Ely temporarily took over the job as head presser he was increased to 40 cents an hour, and that when the head presser returned Ely was sent back to his former job as press helper and reduced to 35 cents per hour; that he only received the 40 cents per hour during the time he acted as head pressman for the reason that the job in question was rated at 40 cents per hour; that the reduction to 35 cents per hour was in the normal course of respondent's business, and therefore Ely's reduction from 40 cents to 35 cents an hour was not because of union activities. However the undersigned finds that Ely's discharge became effective on November 26, 1938, and that he was refused re-employment by respondent because of his membership and union activities in Local 21798.

46. Walter Winslow, a member of Local No. 21798, first began his employment with the respondent in September 1935 as a hay cutter at 30 cents an hour. He worked at various jobs such as in the cattle corrals, seed house, oil mill, warehouse and outside work. In 1938 his hourly rate of pay was increased to 40 cents an hour. He worked on and

off at various times and in fact was off from work in September 1938, at which time he was recalled at the beginning of the September 1938 ginning season and put to work feeding suction. After about 3 weeks, which included a short lay-off, he started working in the oil mill chasing lint. About November 13 Tom Hammond came back to the lint room where Winslow was standing by the scales and asked Winslow whether or not he had joined the Union. Winslow told him that he had and Hammond asked, "Have those other boys over here that is working with you joined?" Winslow told him that he did not know. The men referred to by Hammond were Dick White, W. E. Williams, and Miller Butcher.

47. On November 15, 1938, Tom Hammond, previously described as the foreman of the gin department, came to Winslow during working hours and said, "It looks like the mill is going to have to shut down on account of the boys joining the union." A little later in the afternoon Hammond came back to Winslow and in the presence of another employee by the name of Williams, talked to Winslow and during the course of the conversation Hammond said, "We are shutting the mill down tonight at 6 o'clock on account of the union. Where are you going to place your card at any other place but here?" Winslow said that he told Hammond that he thought he could and Hammond said, "We can't use you here at this plant and no place else."

48. About 5 o'clock that night Joe Hammond

came to Winslow and in the presence of Dick White, W. E. Williams and Tom Donahue said, "Well, I am sorry but we are going to shut the mill down." Winslow's testimony was not denied.

49. Boyd L. Ely, a member of Local No. 21798, was first employed by the respondent between the 22nd and 24th of July 1937 as a hay cutter at 35 cents an hour. He worked on and off for the company at various jobs until November 15, 1938, at which time he was laid off. His rate of pay per hour had been increased from 35 to 45 cents.

50. In July 1938, Ely, while at work, made a remark to his fellow employees by the name of Butcher and White that he was going to go to a union meeting that night and that he intended to join the Union. The next morning when he came to work about 6 o'clock Tom Hammond saw him coming to work and went over to where Ely was stationed. He asked Ely if he had joined the Union last night. Ely told him that he did not and according to Ely, Hammond said, "It was no good bunch trying to run somebody else business."

51. In October 1938, Ely had a conversation with Clyde Sitton, nephew of Gordon L. Hammond, plant manager, and during that conversation something was said about the Union. Sitton said he believed the Union was all right but it would never work down there, that if the Union came they had orders to shut the place down, lock the gates and let it lay.

shift and when he went to work that night the mill was shut. He asked Joe Hammond, who was in charge on that shift, why the mill was closed. Hammond said that he did not know why the mill was shut down. Neither Sitton nor Hammond were produced as witnesses to deny Ely's version of the conversation in question.

53. The respondent contends that the mill was shut down and that Winslow and Ely were laid off because of lack of work. That contention does not seem to be well founded in that Board Exhibit 3, part of which was read into the record and withdrawn, shows that Douglas Cafall was first employed by the respondent on September 26, 1938, and worked through until the week ending December 31, 1938. He was again employed during the week ending February 2, 1939, and also worked the full week ending May 6, 1939, and for each of the weeks ending February 2 and May 6 he received the sum of \$75; that Al Chestnut was first employed by respondent on December 23, 1938, and worked until February 23, 1939; that Andrew Clark was first employed by respondent on January 8, 1939, and worked part time until February 3, 1939; that Joseph Melton was first employed on October 1, 1938. The record further shows that other new employees were taken on by the respondent during the last half of the year 1938 and the first half of 1939. While the above-named men in some instances were not doing the same type of work as was done by Boyd L. Ely and Walter Winslow,

there was no proof that Ely and Winslow could not have done the type of work performed by the new employees. On the contrary there was evidence that Ely and Winslow had worked in many jobs and it can be fairly inferred that they could have been retained by respondent doing the work in question instead of the new employees. Therefore, the undersigned finds that Boyd L. Ely was locked out of his employment by respondent on the night of November 14 and Walter Winslow was locked out of his employment on November 15 because of their membership and activities in Local 21798.

54. Steven J. Griffin first began his employment with the respondent, Boswell Company, in August 1932. He worked on and off at various jobs until May 1936 at which time he bought a hay baler. Griffin baled hay for the respondent, Boswell Company, during the seasons of 1936-1937 and 1938. In August of 1938 he returned to work for the Boswell Company at 40 cents per hour. He worked about 22 hours the week ending August 11 and then was laid off until the week ending October 13, from which time he worked continuously until his lay-off on November 17. Griffin joined Local No. 21798 on the 15th or 16th of November 1938 while attending a meeting of said local. During the afternoon of November 17, 1938, Tom Hammond went to the cotton gin where Griffin was sewing sacks and asked Griffin in the presence of Paul Morris and Horace Hastings if he had joined the Union. Griffin told Hammond that he had been a member for about 2

weeks. Hammond walked directly to the back of the warehouse and met Gordon T. Hammond where they stood and talked for 15 or 20 minutes.

55. A few minutes after Tom Hammond had talked with Gordon L. Hammond he (Gordon L. Hammond) came to Griffin and said "Steve" he said "Can you find work in any place else?" Griffin said, "I don't know" and said "You know how times is. I don't suppose I could" and said "If I am laid off I suppose I will have to try." Hammond said, "I know you have got as big a family as anybody around here. You probably need the work as bad or worse than anybody around here, but I just haven't got any work for you" and said "some of the boys has got it in their head that you boys are being laid off on account of the union but" he said "there is nothing to that. I am just going to lay you off." Griffin has not been recalled to work by the respondent since November 17, 1938.

56. W. R. Johnston was first employed by the respondent, Boswell Company, in September 1937 as a bale hauler at 35 cents an hour. He continued to work as a bale hauler until January 28, 1938, at which time he injured his leg and was off until about the 20th of October 1938, at which time he was re-employed as a press helper on No. 4 gin and continued to work as a helper and on other jobs until the night of November 17, 1938.

57. On November 7, 1938, Johnston joined Local No. 21798 and attended the meeting of said local on November 16, 1938. During the day November 17,

1938, Gordon Hammond told Johnston that he was laid off on account of the weather and the shortage of the cotton crop, and according to Johnston, then said, "I hate to lay you off but then someone had to go and it is just as well to be you as anyone else and that I wasn't laid off on account of the union activity" and said "some of them thought it was, but it wasn't."

58. Hammond did not deny the testimony of Griffin but stated that Griffin and Johnston were doing the same kind of work all along and that he had notified both Griffin and Johnston on the morning of November 17, 1938, that there would be no more work after that day for a few weeks.

59. Hammond further stated that neither Johnston or Griffin had returned and asked for reemployment. In this connection the evidence clearly shows that it has been, and was at the time of the hearing, the policy of the company to notify men when they were to return to work and even if it were true that Hammond told Johnston and Griffin on the morning of the 17th that there would not be any work for them for a few days, he has never notified Griffin or Johnston to return to work at the Boswell plant. The undersigned finds that Griffin and Johnston were laid off on November 17, 1938, because of their union activities and membership in Local No. 21798.

60. O. L. Farr began his employment with respondent in September 1936 as a ginner in the ginning department at 45 cents an hour. He continued to work on and off as a ginner and at other jobs until

January 1938, at which time he was transferred to the oil mill department and worked continuously through 1938, except for a 2 weeks' vacation. In November 1937 Farr's hourly rate was increased from 45 to 50 cents per hour. His last period of employment began on October 15, 1938, as a ginner, at which job he continued to work until November 18, 1938. Farr joined Local 21798 on September 2, 1938, and he, together with Gilmore, Lonnie Spear, R. K. Martin, George Andrade and H. H. Wingo, constituted the nucleus around which Prior attempted to organize the employees of the respondent's plant.

61. On the morning of November 17, 1938, Farr, vice president of Local 21798; R. K. Martin, secretary-treasurer of said local, employees of the respondent; and Prior, the organizer, met as a committee representing Local 21798 with Gordon L. Hammond at the Boswell offices for the purpose of discussing the reduction of working hours in slack periods so that all of the employees would get some of the work during such periods. At 1 o'clock that same day Tom Hammond went to the gin upon which Farr was working and asked Farr if they had been trying to "contradict" him in his job. Tom Hammond referred to the meeting of the Union with Gordon L. Hammond of that morning. Farr told Hammond that they were not attempting to get his job and Hammond said that if he was wrong he was sorry, but he said, "We are going to straighten this out tomorrow." Farr's testimony regarding his conversation with Tom Hammond was not denied.

62. At about 10 o'clock on the morning of November 18, 1938, Bill Robinson⁷ told Farr to shut down his gin for a little meeting outside the plant. Robinson helped Farr shut down the machinery. Farr asked Robinson why the mill was being shut down or words to that effect. Robinson said, "They will tell you about it outside. It is about the union." Robinson walked upstairs and Farr went out the side door of the gin. Farr stated that when he got outside the gin there were approximately 60 men gathered there on the Boswell property. For the most part the alleged group of men were employees of the respondent but Farr stated there were some farmers and cowboys or boys dressed as cowboys in the group.

63. Farr said that Jack Ely, an employee of the respondent, walked up to him and said, "I want to know about your damn union." Farr said, "Well what about the union, Jack?" and Ely said "The company doesn't want your union here" and said "I don't see why you fellows should turn against the company you are working for." Farr said, "Well we don't—this is somebody else meeting, this is not our meeting and we don't discuss our union activities on the job." Someone in the crowd asked, "Who

⁷Robinson is a mechanic in the gin department. He repairs the gins, tells the operator when to shut the gin down for repairs and returns lint to the operator when it is shown that the gin is not cleaning the lint properly and generally directs the operation of the gins as to proper cleaning, etc. The undersigned finds that he is a straw boss and as such is a supervisory employee of the respondent.

is the president of the union?" Farr told the crowd that Lonnie Spear is the president of Local No. 21798. The crowd gathered around Spear who told them that the union was only trying to make the working conditions for everybody better; that the talk had been of some lay-offs and that they wanted shorter hours for that reason; that everybody should work and get their share of the work. Some unidentified person in the crowd shouted, "Let us throw them out. The company is behind us." Farr testified that John Duncan, Wallace Tisdale and Stan Salisbury took hold of Spear, one on each arm and the third behind his back and by pulling and pushing forced Spear across the public highway from the plant into the office of the superintendent of the Boswell Company. The term "superintendent" is another description given to the plant manager, Gordon L. Hammond. While dragging and pushing Spear into the office they tore Spear's shirt. A number of the individuals who had gathered outside the plant followed the three men and Spear into the office and Farr was among them. Farr identified (Yankee) Roberson as being among those who were in the office of Gordon L. Hammond. Hammond had left that morning about 8:30 for Los Angeles, California, and was therefore not in the office. An unidentified individual called to Louis T. Robinson, general manager, and demanded that he pay the union men off and discharge them. Robinson came to the door of his office and said "You men go back and start your machinery. I will be right out in a short while and straighten this out."

64. The employees, including members of Local No. 21798, left the office and started back to their jobs. Farr stated that he started his machine in operation and Spear started the electric motor on his gin. As Farr and Spear started their machinery Kelly Hammond and Burdine Mitchell, employees of the respondent, and Joe Hammond, who has heretofore been described as a foreman, came in the front door of the gin. Kelly shut off the air blast fan of Farr's gin. This forced Farr to quit feeding the overflow. Robinson came in and shut some more machinery off. Farr stopped working. He asked Robinson what to do about it, and he said, "I have nothing to do about it." Tom Hammond walked in and Farr said, "Tom, what do you want me to do? Do you want me to run this machinery under these conditions?" Hammond did not answer but turned and walked out. Farr asked Robinson what he should do about running the machinery. Robinson said, "There don't seem to be enough of you union men to run it" and said "I should say you should go home. That would be my advice."

65. Bill Robinson is and was at the time of the hearing a mechanic in charge of keeping the gins in condition as well as giving orders to the gin operators with respect to seed operations. When the gin was not properly working Robinson brought the seed back and told the gin operators to make certain changes to produce the proper effect upon the ginning of the cotton and on various occasions would have the operators stop the gins for repairs. The

undisputed testimony of Farr was that Robinson gave him orders during the 1937-38 and 1938-39 seasons.

66. R. K. Martin, who was present at the meeting at the plant on November 18 and who accompanied the men who forced Spear into Hammond's office, stated that Rube Lloyd, Yankee Roberson and Oscar W. Busby were among the group who went into Hammond's office at the time Spear was dragged in there by the individuals above named. Rube Lloyd is the head carpenter in the carpenter shop and described by Robinson, general manager, as being in charge of a group of men while at work and Oscar W. Busby as a head mechanic in the machine shop who receives his orders from Gordon L. Hammond and transmits such orders to the men who work in his department. The undersigned finds that Busby is a supervisory employee of respondent. Martin's testimony was not denied.

67. On the morning of November 18, Lonnie Spear, who worked on the 10 a. m. shift, came to work a little early for the purpose of cleaning the machinery and getting ready for the day's work. He told Todd, an engineer, to start the engine. Todd said that he was told not to start the engines, that they were going to have a meeting out there and pointed towards the warehouse. The remainder of Spear's testimony regarding the incidents which took place on the morning of the 18th is practically the same as above described by O. L. Farr. Todd, even though working at the plant during the hearing, was not produced to deny Spear's testimony.

68. After Robinson had told the men to go back to work and that he would come down later and straighten the matter out, and after the above-described individuals had forced Spear, Farr and others to shut down their machinery and told them to go home, George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear and H. M. Wingo, all employees of the respondent and active members of Local No. 21798, waited around for a while for Robinson to come down and straighten the matter out. Robinson failed to appear and they left the plant and went home. Between 11 and 12 o'clock of November 18, O. L. Farr called Louis T. Robinson and asked him what the company was going to do about the union men being forced off the job that morning. Robinson told Farr that he would think the matter over and that he should call later.

69. Robinson admitted the telephone conversation with Farr but claimed Farr, as directed, did not call him again regarding the matter. Robinson admitted, on cross-examination, that even though, on the morning of November 18, he promised the employees, at the time he told them to return to their work, that he would come down later and straighten the matter out, did not keep his promise with the evicted union members.

70. At 6:30 in the evening of November 1938, Farr and Martin met Prior at Bakersfield, California, near the Greyhound Bus Terminal, and told Prior that the union employees had been evicted from the plant by foremen and non-union men em-

ployed by the respondent that morning about 10 o'clock. Prior called Robinson at his home that same evening and told Robinson about the information he had received from Martin and Farr. Robinson told Prior that the employees were going to have a meeting that night and that he would wait until he had a report from them before he did or said anything. Prior told Robinson that these men who had been evicted were members of Local No. 21798 and that if the company wanted to make a fight over the matter that the Union would not back down. Robinson stated that he did not know what Prior was talking about. Robinson, in giving his version of the telephone conversation in question, said that Prior stated, after informing him that he had heard of the events of that morning, that he wanted to come up and help straighten the matter out. Robinson said, "I told Prior that I felt we were fully capable of straightening it out ourselves" and that Prior said, "That *is* would have to be straightened out, and that whatever steps necessary to straighten it out would be taken" and Robinson said he told him "If he thought that was a threat he was wasting his breath" and hung up.

71. On the morning of November 19, 1938, Martin, Spear and Prior met Gordon L. Hammond and Louis T. Robinson at the offices of the respondent's plant in Corcoran. At that meeting the whole matter of November 18 was discussed and Robinson stated that the employees acted (in the eviction incident) and there was nothing he could do about it other

than Gordon L. Hammond would feel out the sentiment of the employees about union men returning to work. Prior asked Robinson how long it would be before he could give him an answer. Prior told Robinson that the matter was very serious and more so than the management or employees realized and that he would like an answer not later than 12 o'clock that day. The conference ended. Robinson, in giving his version of the meeting with Prior and others on the morning of the 19th, stated that he told Prior that the men could go back to work at any time and Prior said that they would have to have a special protection to go back to work. Robinson, so he claimed, told Prior that the men did not need any special protection and that therefore the company would not furnish such, but that they could go back to work. He then said to Prior and the men present, that they should go and talk to the boys themselves and said, "I think they would find everything was all right" and said that he told Gordon L. Hammond to feel out the sentiment of those men and see if he felt they needed special protection. Robinson said that Prior asked him if he were talking for the head of the office and Robinson claimed he replied that the head office had come to no decision except that the men could go back to work at any time; that if they did not go back to work they would get the pay anyway until the head office came to a determination of the whole matter. Robinson did not call Prior before 12 o'clock that day or at any other time during the day. Local 21798, having failed to receive any com-

munication from Robinson regarding the eviction from the plant of its union members, decided to and did, on November 18, 1938, vote to place a boycott against the company and its products.

72. On November 25 Prior called at the J. G. Boswell office on Spring Street, Los Angeles, California, to discuss the matter with J. G. Boswell, president of the respondent company. Prior explained to Boswell and an unidentified person who was there present, the incidents of November 18 at the Corcoran plant and the taking of the boycott vote. Boswell told Prior that if the organization boycotted their products by use of goon squad attacks that the company would probably have to affiliate with some organization for its protection and that as far as the trouble at Corcoran was concerned, the local management was competent to handle it and that it was in their hands. The conference between Boswell and Prior broke up without further discussion. The conversation between J. G. Boswell and Prior was not denied by the respondent.

73. About November 25, Prior and Spear called on Gordon L. Hammond at the Boswell plant in Corcoran and asked for a meeting with Hammond and Robinson about taking the union men back to work. Robinson was out. Prior asked Hammond to arrange for a meeting between the union committee, Hammond, and Robinson for the next day. The meeting was arranged and held the following day. Martin and Prior represented Local No. 21798 and Louis T. Robinson represented the respondent company. Robinson wanted to know who the men were

that Local 21798 wanted taken back to work and said that there had been times between November 18 and the date of the conference that they did have work for the men and that they could use Spear. He asked who was next. Prior named R. K. Martin. Robinson laid his pencil on the desk and said, "Well, Mr. Martin's machine is shut down and we can't use Mr. Martin. We might at sometime in the future but we don't have any idea when." Prior told Robinson that if that was the attitude of the company regarding Martin there was no need of naming any others. In substance Robinson admitted the testimony of Prior regarding the meeting of November 26 but claimed that that meeting took place on November 28.

74. Gordon L. Hammond, in giving his version of the meeting of November 19 and the meeting of November 26, which he claims was on the 28th, stated that he told Prior that the respondent would take back all of the union men and coupled with Hammond's version of the conversation Robinson likewise stated, at the meeting of November 26 or 28, that he told Prior that the respondent would take back all of the union men except Martin and that Martin would probably be taken back at a later date. Prior claims that the meeting was held on the 26th of November. If Hammond's and Robinson's version is correct as to the date of the second meeting, that is being November 28, it is indeed strange that on that same day, November 28, Robinson wrote and mailed registered letters⁸ to R. K. Martin, L. E. Ely

⁸Board Exhibits Nos. 14, 15, 16, 17.

and George Andrade advising each of them that their employment with the respondent terminated on November 26 at 5 p. m. Robinson, when examined by his own counsel, did not remember whether the letters in question were written before or right after the conference with Prior regarding the reemployment of the union men. It is immaterial whether or not the letters were written before or after the conference with the committee of Local 21798 on November 26 or 28, for the reason that on November 19, Hammond and Robinson both advised Prior and his committee that the union men would be taken back to work, and on November 28, Robinson also advised Prior and his committee that the union men would be taken back to work. Therefore, in either event, both Hammond and Robinson were deceitfully misadvising Prior and his committee regarding the status of members of Local 21798, and it is evident from the registered letters sent out on the 28th that the company had no intention of taking the members of Local 21798 back in its employment. The letters show conclusively that the said members of the said Local had been definitely discharged from their employment with respondent November 28, 1938. On December 6, 1938, similar registered letters were sent out to O. L. Farr, L. A. Spear and H. M. Wingo.

75. On January 18, 1939, Prior had a further conference with Louis T. Robinson, at which time Prior asked Robinson if he had changed his opinion about taking union employees back to work. Robinson stated that he had not changed his opinion. That

was the last conference Prior had with the officials of respondent company.

76. From the above-stated facts and from the whole record, the undersigned finds that George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear and H. N. Wingo were evicted from the respondent's plant on the morning of November 18, 1938, by the respondent, and refused reemployment by it for the reason said employees joined and assisted Local 21798, and engaged in concerted activities with other employees for their mutual aid and protection.

77. Evan C. Powell (E. C. Powell), a member of Local 21798, first began his employment with respondent in August 1936 as a general workman at the rate of 35 cents per hour. In September 1936 he was transferred to a cotton press tying cotton for a few days and was again transferred to an engineering job, which consisted of running the engines for the smaller gins, and later was put in charge of the main engine plant. On September 27, 1937, Powell was injured and did not return to work until November or December 1937, at which time he went back on the gins.

78. On the morning of November 18, 1938, shortly after the union men, hereinbefore referred to, were forced out of their employment as before described, Bill Robinson told Powell to go over and take No. 4 press, which formerly was operated by Joe Briley. Powell refused to take the job because it was the job performed by Briley, who had been

evicted, and told Tom Hammond that if he took such a job he would be scabbing on the Union. Hammond told Powell to go over and take No. 1 press, which had been operated by Wingo. Powell refused because Wingo had also been evicted from said job. At about that time Bill Robinson appeared on the scene and talked to Powell. During that conversation Robinson said according to Powell "I'd better throw that God damned button down before the men found out I had it on and scatter up the ground." The button referred to was a union button which Powell was wearing for the first time. Powell left the plant and went to the home of O. L. Farr. The testimony of Powell regarding the conversations with Hammond and Robinson were not denied.

79. About the 20th of November Clyde Sitton, a nephew of Gordon L. Hammond, went to Powell's home and told Powell that Gordon L. Hammond wanted to see him at the office. On or about the 25th of November 1938 Powell did see Hammond, who told Powell that he did not have anything against him and that he could return to work. Powell told Hammond that he would be afraid to go back to work after what happened to the other members of the Union. Hammond advised Powell that he would tell the employees to lay off and they would do so and that therefore there was no reason for him to worry. Powell under the circumstances refused to return to work. Hammond said "After I find out it was all hooey that a bunch of fellows claiming something they couldn't back up, I would come back

and if there was anything there, he would give it to me." Hammond never notified Powell to return to work.

80. On November 28, Powell received a registered letter advising him that his employment with respondent terminated on November 28 at 5 p. m. The undersigned finds that Powell was discharged by respondent on November 28, 1938, because of his union activities and membership in Local No. 21798.

81. Eugene Clark Ely, a member of Local 21798, began his employment with the respondent in September 1937 as an electrician's helper at 35 cents per hour. Later he worked as a watchman in the cotton yard and was transferred to the oil mill as a cleaner. He worked on and off at various jobs until January 30, 1939. On Saturday preceding Monday, January 30, Ely did not work. On the previous Saturday Ely told Rube Lloyd, head carpenter, who has supervision over the other men in that department, that he had hurt his shoulder the day before and did not feel like working that day. Lloyd told him that it was raining and there would not be much doing anyhow and that it was perfectly all right for him to be off but told him to report to work Monday, January 30. On Sunday, January 29, Ely went to a union meeting at Bakersfield with R. K. Martin, E. L. Ely and W. R. Johnson. While at Bakersfield attending the meeting Prior, E. L. Ely, W. R. Johnston, R. K. Martin, Eugene Clark Ely, and several other fellows were standing out in front of the Teamsters Hall in Bakersfield. While they were standing there W. W.

Boswell⁹ went by the hall driving at a rate of about 15 miles an hour and looked toward the men in front of the hall. On the front of the hall is a sign "Teamsters Hall, Local No. 87."

82. On Monday morning, January 30, when Ely returned to work about 6:30 in the morning Rube Lloyd, foreman of the carpenter department, met Ely in the yard. Ely asked Lloyd what he would do that day. Lloyd said, "There is nothing else to do. We are all through." About 30 minutes later Ely had a conversation with Gordon L. Hammond in the office of the Boswell plant. Ely told Hammond that Lloyd had laid him off that morning. Hammond said, "Well, I don't know. There might be some work to do later on." Ely went home. He has never been recalled to work by the respondent.

83. W. W. Boswell denied that he saw Eugene Clark Ely and the other men in front of the Teamsters Hall in Bakersfield. He denied that he had knowledge of the fact that such a hall existed in Bakersfield. The undersigned believes the testimony of Ely and finds that Ely was discharged on January 30, 1939, because of his membership in Local 21798 and because of his union activities.

84. The undersigned finds that Eugene Clark Ely was discharged on January 30 and from then on was refused reemployment by respondent because said

⁹W. W. Boswell is the brother of J. G. Boswell, president of the respondent and has charge of the cattle, meal and grain for respondent and is a supervisory employee of the respondent.

employee joined and assisted Local No. 21798 and engaged in concerted activities with other employees for their mutual aid and protection.

85. James W. Gilmore was refused reemployment by the respondent on July 1, 1938; L. E. Ely was discharged on November 26, 1938; Boyd Ely was locked out of his employment on November 14, 1938, and Walter Winslow was locked out of his employment on November 15, 1938; W. R. Johnston and Steven Griffin were discharged by respondent on November 17, 1938; respondent's employees and supervisory employees, with the full knowledge and consent of the respondent, by means of force and threats of violence, did, on November 18, 1938, evict George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear and H. N. Wingo from their work. However, respondent produced evidence during the hearing to show that the weekly wages of the above-named evicted employees were paid until respondent sent each of them a registered letter advising them that their services were discontinued. Andrade's registered letter was written on November 28 advising him of discontinuance of his services from November 26. The same set of facts regarding the registered letter applies to R. K. Martin. On December 6, respondent sent a registered letter to O. L. Farr advising him that his services were discontinued on December 3. Respondent wrote and mailed a registered letter on December 6 to L. A. Spear advising him that his services were discontinued on December 5. Respondent sent a similar

letter to H. N. Wingo on December 6 advising him his services were discontinued on December 3. The said evicted employees testified that they were not sure that the checks they received after November 18 were payments in full for the wages they would have earned had they worked. In view of all of the circumstances surrounding the eviction of said employees on November 18, 1938, the undersigned finds that said evicted employees were actually discharged on November 18, 1938, and that respondent should be given credit for any monies paid to said employees between November 18, 1938 and the dates of the registered letters. On November 18, 1938, E. C. Powell left the employment of respondent for good and sufficient cause, as heretofore discussed, and on November 28 respondent sent Powell a registered letter advising him that his services were discontinued on November 26, 1938, and on January 30, 1939 respondent did discharge Eugene Clark Ely, all for the reason that he together with the said James W. Gilmore, L. E. Ely, Boyd Ely, Walter Winslow, W. R. Johnson, Steven Griffin, George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, E. C. Powell, L. A. Spear and H. N. Wingo joined and assisted a labor organization known as the Cotton Producers and Grain Mill Workers, Local 21798, A. F. of L., and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

86. By the refusal to reemploy James W. Gilmore on July 1, 1938; by the discharge of L. E. Ely on

November 26, 1938; by the lock out of Boyd Ely and Walter Winslow on November 15, 1938; by the discharge of W. R. Johnson and Steven Griffin on November 17, 1938; by the eviction by force and violence and threats of violence of George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear and H. N. Wingo on November 18, 1938; the discharge of E. C. Powell on November 26, 1938 and the discharge of Eugene Clark Ely on January 30, 1939, and refusal of reemployment to each of them, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

87. By said refusal to reemploy James W. Gilmore, and by the lock out of Boyd Ely and Walter Winslow on November 14 and 15; by the discharge of W. R. Johnson and Steven Griffin on November 17, 1938; by the eviction by use of force and violence and threats of violence of George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear, and H. N. Wingo on November 18, 1938; by the discharge of E. C. Powell on November 28, 1938, and the discharge of Eugene Clark Ely on January 30, 1939; and by the refusal of respondent to reemploy any of the said employees at any time thereafter, except Joe Briley, respondent has discouraged membership in a labor organization known as Cotton Producers and Grain Mill Workers Union, Local No. 21798, A. F. of L., in violation of Section 8 (3) and Section 2 (6) and (7) of the National Labor Relations Act.

88. By the activities above set forth in Section IV, A and B, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 and Section 8 (1) of the Act.

89. Elmer Eller, who was alleged to have been discharged on November 17, 1938, because of his union activity, did not appear as a witness during the hearing for the reason, as the undersigned learned, that he had a job in Georgia and did not wish to urge his claim. Therefore, the undersigned recommends that the complaint as to Elmer Eller be dismissed.

90. Joe Briley was recalled to work a few days after November 18, 1938, therefore it is recommended that the complaint as to Joe Briley be dismissed.

The Independent Union

91. Louis T. Robinson, general manager of the J. G. Boswell Company's plant at Corcoran, admitted that a few minutes after the meeting and disturbance that occurred about 10 o'clock on the morning of November 18, hereinabove fully set forth, Rube Lloyd, an expert carpenter and construction man, who at times is in charge of three or four men, Clyde Sitton, nephew of Gordon L. Hammond, and an unidentified third person came to his (Robinson's) office and advised him that a number of respondent's employees had decided to organize a company union. The committee of three requested advice from Robinson as to what they should do. Robinson testified "I told them that I was not in a position to advise

them, and that they would have to seek other advice." The committee left and went to the office of the district attorney of Kings County seeking information as to the formation of an independent union.

92. District Attorney Walsh, a witness appearing on behalf of Boswell Company, in relating the conversation of the visit of the committee of the independent union to his office, stated that the gentlemen, four or five in number, asked him what he knew about the Wagner Act and the possibility of the local employees forming an employees union at the Boswell plant. Walsh told the committee that any organization could form their own employees union and if a majority so desired, could select their own bargaining agency. The committee asked Walsh if he would represent them in the organization of a union. He refused but did tell them that the employees of the Lucerne Creamery and the Caminol Companies of Kings County had organized their own independent union. Walsh advised the committee that Clark Lament of Lemeore had formed those two independent unions and that he would be a good attorney for them to see. Walsh called the Caminol Company and talked to the chief bookkeeper who told him that he would talk with some of the boys and when the committee of the Boswell Company came down that they would be glad to give the committee any help they could.

93. That same afternoon, November 18, Rube Lloyd, Clyde Sitton and Oscar W. Busby, the head man in the machine shop, went to Robinson's office

and told Robinson that the committee had gone to see the district attorney and had discussed with him the possibility of forming an employees association.

94. During that day, November 18, 1938, the committee arranged for a meeting to be held that evening in the office of the Boswell Company's plant at Los Angeles, California,¹⁰ in which he stated in he had knowledge of the proposed holding of the meeting in the company's plant that evening but could not remember from whom he had gained such information. Robinson, on November 18, wrote and mailed a letter to the J. G. Boswell Company office at Los Angeles, California,¹⁰ in which he stated in part as follows:

The non-union men then appointed a committee and the committee went to the district attorney for instructions as to the best method of procedure for them to follow. It is my understanding the district attorney advised them that up to date they were in the clear. The non-union men have now called a meeting for tonight. Their thoughts seems to be running to the formation of a company union as a protective union in preventing them from being forced into the A. F. of L. or C. I. O. The Caminol Company and the Lucerne Creamery of Hanford have both had some trouble and this is the method they used in handling same. This is also true of the San Joaquin Light and Power Corporation. I have suggested to some of the cooler

¹⁰Board Exhibit No. 24.

heads that at the meeting tonight they appoint a committee to talk with the union men that were run off the job this morning and offer to allow them to come back to work on some basis as might be agreed on at the meeting of the employees tonight. That they take no action in forming a company union but appoint a committee to investigate such a proposal and make recommendations back to a later meeting.

I think it will be helpful if you will obtain any information you can regarding company unions and give me the benefit of your ideas in this connection. I will keep you posted as to developments.

The meeting as arranged was held in the office of the Boswell Company at Corcoran on the evening of November 18, 1938. A number of the employees, together with those in a supervisory capacity, attended that meeting. Minutes were kept of the meeting and offered as Board Exhibit No. 19. Later the Exhibit, after the contents of same had been read into the record, was withdrawn. The record shows that Samuel Brenes, head bookkeeper in the office of the respondent company at Corcoran, and a number of other supervisory employees attended that meeting, including Busby, Yankee Roberson, Rube Lloyd and Kelly Hammond.

95. Gordon L. Hammond, plant manager, admitted on cross-examination that Rube Lloyd and E. M. (Yankee) Roberson talked with him at the plant on the evening of November 18 and said "they said

that they had come there that evening for the purpose of letting the company know that they were satisfied with their work and the way it was being managed and the conditions in every way." Hammond stated that after his conversation with Lloyd and Roberson he went about his work and did not pay much attention to what transpired but did say that the men remained there for some time.

96. A second meeting of the employees for the purpose of completing the organization of the independent union was held on November 28, 1938, in the American Legion Hall at Corcoran, California. At that meeting, bylaws and a constitution were adopted¹¹ and officers were elected. Samuel Brenes,¹² above described as head bookkeeper in charge of that department, was elected treasurer of the Independent; J. W. Hubbard, farm advisor to the Boswell Company, was elected president; and Oscar W. Busby,¹³ head mechanic in the machine shop, was elected

¹¹Board Exhibit No. 18.

¹²Brenes stated that he handled cash, makes out checks, corresponds with the Los Angeles Office in regard to bookkeeping entries, makes journal entries and adjusts various accounts. He admitted that he was at the head of that department and is paid on a monthly basis from the Los Angeles office.

¹³The above stated O. W. Busby is a head mechanic in the machine shop and directs the work of other employees in that department. He is paid on a monthly basis and receives his check from the Los Angeles office of the Boswell Company. He is the highest salaried man in the machine department and is therefore a supervisory employee and a responsible agent of the respondent.

vice president. E. M. Roberson, known as Yankee Roberson, who is classified as a clerk, was elected secretary. He is paid on a monthly basis from the Los Angeles office. Hubbard, Brenes and Roberson were the only ones nominated for the respective position to which they were elected. W. Willoughby, a storekeeper who is in charge of stores and materials and issuance and delivery thereof; H. G. McKeever, who is designated as an agronomist (experimental work in the raising of crops); and Rube Lloyd, head carpenter of that department, were elected as members of the labor relations committee of the Independent.

97. Eugene Clark Ely, an employee of the respondent and a member of Local 21798, stated that Roberson sent him a card notifying him of the second meeting of the Independent; that Tom Hammond, who has been described as foreman of the gin department, came around on the afternoon of the same day that he received the notice of the meeting from Roberson and asked him if he were going to attend the meeting of the Independent that night. Ely told him that he did not know. Hammond stated, "Well, if you want to keep on working you had better be there." Tom Hammond, although employed by respondent at the time of the hearing, was not called as a witness to deny Ely's testimony.

98. The bylaws and constitution of the Independent were adopted at the meeting of November 28, 1938. A number of those who signed the bylaws and constitution are Oscar W. Busby, J. W. Hubbard,

Tom B. Hammons, Joe Hammond, S. F. Brenes, W. F. Willoughby, and R. D. Lloyd, all of whom are supervisory employees.

99. At a meeting of the Independent held on April 5, 1939, Willoughby was elected president to take the place of S. W. Hubbard, and McKeever was elected secretary of the Independent. The membership of the Independent includes employees at the Corcoran and Tipton plants of the Boswell Company as well as supervisory employees in both plants. Tom B. Hammond, foreman of the gin department and Joe Hammond, foreman of the oil mill and linter room are both members of the Independent.

100. Brenes, admitted that the Independent does not now have or ever had any agreement of any nature with the respondent, Boswell Company, and that the Independent has never made any attempt to secure an agreement between the Independent and the respondent. Brenes' testimony in that regard seems to be borne out by a letter, dated April 15, 1939,¹⁴ written by H. G. McKeever, secretary of the Independent, to J. G. Boswell Company in Los Angeles, California, which in parts reads as follows:

On April 5, 1939, the question was raised from the floor regarding unemployment of Association members, and a motion was made requesting the Governing Board of the Association to notify company officials at both Corcoran and Tipton that the Association is keeping a list of un-

¹⁴Board Exhibit No. 28.

employed members with their qualifications and requesting the management to get in touch with the Association when new men are needed.

At a meeting of the Governing Board of the Association on April 13, 1939, the secretary was directed to perform this duty which is accomplished herewith. I do, however, wish to emphasize the fact that this is merely a request. We are not agitating for a closed shop but we want to do everything that is reasonable and just to keep our members employed.

Reviewing this letter in its most favorable light on behalf of the Independent, the most that can be said is that it is a mere gesture of an attempt to bargain on behalf of the Independent.

101. [The close association of Oscar W. Busby, J. W. Hubbard, Tom B. Hammond, S. F. Brenes, W. F. Willoughby, R. B. Lloyd and Joe Hammond, supervisory employees of the company, caused by the nature of their work, is indicia that these men are interested in the welfare and good will of the company and not that of the employees. They tell the employees in their respective departments when they are laid off in slack periods; when to return to work; instruct them in their work while employed; and generally supervise the whole operation of their departments as well as the work of their men. These same individuals are officers and direct the activities of the Independent. It is impossible to believe that under such circumstances the employees of the Boswell

plant have a fair and impartial representation on matters of vital interest to them when represented in collective bargaining by supervisory employees. "Collective bargaining under such circumstances is nothing less than a sham and a delusion when the employer sits on both sides of the table by reason of his domination of a particular organization with which he deals."¹⁵ Therefore, the undersigned finds from the above-stated facts and from the whole record that the respondent, Boswell Company, has interfered with, dominated and aided in the formation and administration of a labor organization known as the J. G. Boswell Company Employees Association of Corcoran and Tipton in violation of Section 8 (2) of the Act.

102. On January 21, 1939, Prior had a conference with the district attorney of Kings County at Hanford, California, in the presence of L. E. (Elgin) Ely, a member of Local 21798, regarding the law of California as to the use of pickets and the number that might be stationed at the Boswell plant. The district attorney admitted that such a conference was had between him and the above-named parties; that he read a portion of the picketing ordinance of Kings County to Prior and that it was discussed in a friendly way. He said that it was a very strict ordinance; that Prior explained to him the type of picketing that was being carried on at the Boswell plant. The district attorney said, ac-

¹⁵Case No. 6831, March Term 1938, Third Circuit.

cording to Prior, "Well, I can see nothing wrong with that type of picketing. As long as that type of picketing is being followed there will be no trouble between his people and our office and they were entitled to protection but that the ordinance would be strictly construed." The district attorney admitted that he explained to Prior at that meeting that it would be an excellent idea to get the chief of police of Corcoran on the wire so that the chief could listen into the conversation between the district attorney, Prior and Ely. The connection was made and the chief of police of Corcoran, through an inter-office communication system in connection with the telephone exchange at Corcoran, listened into the whole conversation.

103. After the conference at the district attorney's office, the district attorney said that he went down to the Boswell plant, looked the situation over and advised Louis T. Robinson that the picketing as conducted was lawful.

104. On January 23, 1939, at a legally called meeting of Local 21798, a vote was taken and it was voted to place pickets in accordance with the ruling of the district attorney at the plant of the Boswell Company to enforce the boycott. It was agreed in accordance with the ruling of the district attorney to place two men in an automobile near the entrance of the company with a sign reading, "A. F. of L. Picket Car," that method was adopted. On January 23, 1939, Prior, George Andrade and Walter Winslow drove to the plant and parked the car im-

mediately east of the scales of the Boswell plant near a power pole and made sure that the car was not on company property. When trucks appeared loaded with produce going to or from the plant, the pickets stepped up to the car and explained to the drivers of the trucks the difficulties between Local 21798 and the company and requested their cooperation. At this phase of the labor trouble at the Boswell plant the Associated Farmers stepped into the picture and their efforts towards organization and the part they played in this matter is hereinafter discussed as follows:

The Associated Farmers

105. A few days before September 8, 1938, a number of the farmers of Kings County, California, began talking about organizing an association of the farmers of said county. The first meeting of the organization efforts was held in the American Legion Hall on September 8, 1938, at Coreoran, California. It is not clear who called the meeting of September 8. However, J. B. Boyett, a farmer and an insurance broker, stated that people were notified by means of the telephone and by direct conversation as he and others met on the street; and that the rumors spread over the country that such meeting was to be held in the hall above specified. Boyett stated that he did make arrangements to have S. H. Strathman, field secretary to the Associated Farmers of the State of California, speak at that meeting. Boyett testified that Strathman explained to the large crowd at that meeting the functions and set-up of the Associated

Farmers and how the various individual county organizations were established, as well as explaining the set-up of the State organization known as the Associated Farmers of California. The said State organization is composed of about 43 members which represent that many organized counties, and in most instances the president of each county unit serves as a State Director, and that the entire membership of the State organization is composed of the directors selected from each county organization.

106. The Declaration of Policy¹⁶ for Agricultural Labor, a copy of which was picked up in Fresno County by J. B. Boyett, was adopted by the Associated Farmers as their declaration of policy regarding labor matters. That policy is the same policy generally adopted by other units of the Associated Farmers. The only change made in the declaration of policy of the Associated Farmers was a change in the name of Fresno County to Kings County. Copies of the policy were distributed among the members of the Association, business men and to other people in the county and reads in part as follows:

That agricultural employers pledge all of their resources to protect every agricultural worker in his right to work and insist that all law enforcement agencies cooperate to the end that adequate and impartial protection of all persons be maintained at all times; that we

¹⁶Board Exhibit No. 13c.

strongly condemn any policy of intimidation or coercion on the part of employers, employees or racketeers; that appropriate steps be taken through resolutions or any other proper ways to bring about respect on the part of labor organizations explaining that they imposed on employers; that membership in any organization is not necessary. In order to work in agriculture, either in producing or distributing or preparing for market of agricultural commodities, employees in agriculture should be free to meet and bargain with other employers collectively or individually whether or not such employees are members of any organization. Any employee should be permitted to discuss his problem with his employer at any time.

107. Preceding the meeting of September 8, 1938, the organizers of the Associated Farmers of Kings County received from the Associated Farmers of California (State organization) an application blank for Articles of Incorporation and the Bylaws. The Associated Farmers did not pay the Associated Farmers of California, hereinafter called the State Association, for the application for the Articles of Incorporation or the Bylaws and neither did it pay the travel expenses of S. H. Strathman to and from the meeting place of September 8, 1938.

108. At the meeting of September 8, 1938, nine directors of the Associated Farmers were elected. J. B. Boyett, a farmer and insurance broker, was

one of the nine directors elected at that meeting. A further meeting was arranged for September 12, 1938. At that meeting, held at the Farm Advisory Office in Hanford, California, J. B. Boyett was elected president of the Associated Farmers and the bylaws and constitution¹⁷ were adopted. Articles of incorporation were prepared at that meeting and were signed at a meeting held on September 29, 1938.¹⁸ The articles of incorporation were filed with the Secretary of State on October 19, 1938.

109. The minutes of a meeting of the board of directors on September 19, 1938, show that Orchard, one of the directors, moved to amend the bylaws. His motion reads as follows:

That any person or corporation not actively engaged in farming be eligible for associate member without the privilege of a vote.

L. D. Farmer, another member of the Board of Directors, seconded Orchard's motion. The motion was adopted by a unanimous vote. By stipulation between all counsel, it was agreed that the amendment to the bylaws be read from the minutes into the record and made a part of Board Exhibit No. 10.¹⁹

110. By means of the amendment to the bylaws, hereinabove discussed, any person or corporation may become an associate member of the Associated Farmers. Supervisory employees of the respondent,

¹⁷Board Exhibit No. 10.

¹⁸Board Exhibit No. 9.

¹⁹Board Exhibit No. 10 is composed of bylaws and the constitution of the Associated Farmers.

Boswell Company, and its general manager, Louis T. Robinson, are members of the Associated Farmers. Among the supervisory employees, other than Louis T. Robinson, who are members of the Associated Farmers are E. M. Roberson, whose position with the respondent has been heretofore described; H. C. McKeever, known as a technical expert in the raising of crops designated as an agronomist, who is paid on a monthly basis at a rate of approximately \$275 per month; J. W. Hubbard, farm advisor; Joe Hammond, foreman of the oil mill.

111. At a meeting of the Board of Directors of the Associated Farmers on September 12, 1938, a motion was made by Edward Orchard to increase the Board of Directors from 9 to 15 members. The motion carried. Lloyd Legget, L. D. Farmer, C. F. Evans of the Boston Land Company, Ralph Morgan and John Dawson were elected, which increased the number of members of the Board of Directors to a total of 15 members.

112. The State organization publishes a semi-monthly pamphlet known as "From Apathy to Action."²⁰ The name of that publication has since been changed to "Associated Farmer." Such publication is sent out to all regular and associate members.²¹ The first article appearing in the February 15, 1939 number is entitled "The Minority Rule."

113. The minutes of a meeting of the Board of

²⁰Board Exhibit No. 13d.

²¹Board Exhibit No. 11 constitutes a list of membership of the Associated Farmers, both regular and associate.

Directors of the Associated Farmers held on January 26, 1939, in Peden's Cafe, Hanford, California, show that J. B. Boyett, president of the Associated Farmers, discussed the picketing at the Boswell plant, and then called upon Mr. Dula and Mr. Pennybaker of Tulare County to explain the origin, functioning and working arrangements of the Farmers Transportation Association by which the farmers of Tulare and several southern counties had succeeded in keeping the flow of produce to the Los Angeles markets open despite hot cargo charges by radical elements. The minutes of that meeting, as above stated, were read into the record in lieu of offering Board Exhibit No. 12, which is, in fact, the minutes of the meeting in question. Boyett admitted that he described to all present at that meeting that pickets had been established at the Boswell gin and as fully as he could described the situation as he saw it and that the products of the gin had been declared "hot" and that there was some question about getting the farmers' products to the market, and that the products of the Boswell plant were not moving out in regular course as was the customary practice. Boyett invited Mr. Pennybaker to explain to all the meeting the organization and purpose of the Farmers Transportation Association.

114. Pennybaker told them at the January 26 meeting that Tulare County had had some experience with the Farmers Transportation Company in Los Angeles and that they had been very successful in getting farm products through to the market, the

final destination. In describing the system used, he said that the Farmers Transportation Company has a director located in Los Angeles who is deputized by the counties who subscribe to this service. Tulare County would employ a man deputized by the sheriff of the county, who would live in Los Angeles. He explained that each truck driver is certified by a certifying officer of the Farmers Transportation Association; that when such a truck driver would be stopped by a union man and asked for his credentials showing the union man that he was a union member and if he were not a member of the union, and the union man requested him not to proceed with the load the non-union truck driver, as per instructions, would call the Tulare County office of the Farmers Transportation Association for help. The county Farmers Transportation office would send guards, deputized by the county sheriff, out to the truck driver with instructions to see the load through to its destination regardless or irrespective of the nature of the trouble or from where such trouble came.

115. As shown by the minutes of the meeting of January 26, 1939, which minutes were read into the record and read as follows:

By which the farmers of Tulare and several southern counties succeeded in keeping the flow of produce to Los Angeles markets open despite 'hot cargo' charges of radical elements the meeting of the directors unanimously adopted a resolution, moved by Mr. Haag, seconded by Mr

Hart, that the Associated Farmers cooperate with the Farmers Transportation Association. The Associated Farmers of Kings County became a member of the Farmers Transportation Association and agreed to the same set-up as that of the Farmers Transportation Association. Boyett, president, and Botts, treasurer, of the Associated Farmers were designated as certifying officers for the truck drivers of Kings County. The expense of the operation of the Farmers Transportation Association is raised by popular subscription. Nothing further was done by the Associated Farmers of Kings County regarding its connection with the Farmers Transportation Association.

116. It is evident from the above stated facts that the Farmers Transportation Association was organized for the purpose of enforcing the labor policy of the State organization and the county units thereof; and it is clear from the whole record that the reason the Associated Farmers did nothing further was due to the fact that there was no cause for further action.

117. About 6 o'clock on the morning of January 30, 1939, L. E. (Elgin) Ely and Steven J. Griffin drove to their picket place in front of the respondent's plant and put a sign on their car which read in substance "A. F. of L. Picket Car." They stationed the car on the east side of the scale house near a telephone post which is near the entrance of the plant. When trucks came to the plant they notified the truck drivers that the Boswell Company was unfair to organized labor and asked them to cooperate with the Union.

118. On the morning of January 30, 1939, between two and three hundred farmers gathered at E. C. Salyer's ranch in the vicinity of Corcoran and there talked about the pickets placed by Local 21798 in front of the Boswell plant. About 9 o'clock that morning while Griffin and Ely were at their picket station they observed Lloyd Legget, a member of the board of directors of the Associated Farmers who is contracting some of the tractor work of the Boswell Company, go into the office of the respondent. Legget stayed in the office about 15 minutes, came out and disappeared in the direction of the business section of Corcoran. Legget returned about 15 minutes later with about 50 other automobiles containing approximately 300 men and parked his car in front of the picket car. The evidence shows without dispute that the farmers who met at the Salyer ranch were the same farmers who proceeded from the Salyer ranch to the Boswell plant that morning.

119. Legget got out of his car and went over to the picket car and opened the door on the side on which Griffin was seated. Walter Grisham, who is a member of the Associated Farmers and on January 30, 1939, was operating one of the Boswell farms consisting of 1300 acres by contract, but owned and operated by Boswell Company, who pays all the expenses of the operation of said farm; in fact it appears from the evidence that Grisham does nothing more than supervise the farm for the Boswell Company, was in the crowd on November 18, and approached the picket car. Among those present in ad-

dition to Grisham were Forest Riley, E. C. Salyer, Phillip Hansen, Grover Taylor Archer, Raymond Gilkey, Lloyd Legget and many others, who were members of the Associated Farmers. Legget said, "What have we got here, Steve?" and said, "You ought to be ashamed of yourself, out here on this picket line, as good as the company has been to you. They just can't stand this" and said "We are not going to stand for it. Get out of the car." Griffin said, "Listen Lloyd, if I am violating the law why don't you get the law. I will go with the law." Legget said, "No, Steve, you aren't violating the law but" he said "we are not going to wait on the law" he said "There is 150 Associated Farmers here that say you can't stay here." Someone in the crowd said, "No, there is 200." Griffin did not recognize the man who said there were 200. The crowd began to holler "turn the car over. Take them out. What are we waiting on." Legget said, "No, the boys are going to leave." Legget said to the pickets, "Boys, you better be getting out of here" and he said "don't come back" and said "If you come back we are not going to say what we are going to do to you the next time." Someone in the crowd hollered to Legget, "Tell him to move his car and they would get out." Ely told Legget and the crowd that he could not start his car because the starter was broken. The farmers told him that they would push him and then tore the picket sign off the back of the picket car and threw it in the back seat of the car.

120. Eugene Clark Ely went to the home of Mar-

tin and told Martin that they were ganging up on the pickets down at the plant and that they were likely to kill them. Martin got in his car, picked up W. R. Johnston and Boyd (Fat) Ely and drove down to the Boswell plant. Martin said that when they reached the plant there were about 200 people milling around on the right hand side of the road and around the picket car. Martin drove his car as close to the picket car as he could and said that Forest Riley, Brice Sherman, Walter Grisham, J. W. Hubbard, Russell Slaybough, J. T. Archer, George Cutter, a Mr. Willis and Ronald Squier, all members of the Associated Farmers, and other members of the Associated Farmers were there. Lloyd Legget came around on his side of the car and opened the door and said, "We are not going to have any more of this picketing around here." Slaybough jerked open the door on the other side of the car and then jumped back. Brice Sherman stuck his head in on the side of the car where Johnston was sitting and said, "Isn't this a pretty looking thing. It looks like a God damned christmas tree" and reached toward the union button on the coat of Johnston. Forest Riley, who was also at the car, said, "Boys we are not going to have this God damned A. F. of L. in Corcoran." Someone in the crowd spoke up and said, "You are going to have to get out of town." Martin said that E. C. Salyer was the man who told them they would have to get out of town. Martin asked who was doing this and Legget said, "The Associated Farmers." About that time Riley, Salyer and Wil-

bur said, "We the Associated Farmers" and said "there are 200 of us present and we represent a thousand more." Martin, official of Local 21798, told the picket boys to leave the picket line and drive into town. The picket car left and the party in Martin's car followed them out.

121. Forest Riley, E. C. Salyer, Phillip Hanson, Raymond Gilkey, Walter Grisham, and others who were members of the Associated Farmers admitted that a great number of the farmers left the Salyer ranch on the morning of January 30, 1939; that they talked about the pickets at the Boswell plant; and that they left the Salyer ranch by automobiles and drove to the Boswell plant and drove the pickets off the picket line. Riley, Salyer, Legget and Wilbur denied that they had said to Martin in the presence of others that the Associated Farmers were behind the driving of the pickets from the Boswell plant and further denied that the Associated Farmers had anything to do with forcing the pickets from in front of the Boswell plant. The testimony of Martin and Griffin regarding the incident of the morning of January 30, 1939, was corroborated by Johnston, Boyd (Fat) Ely and L. E. (Elgin) Ely.

122. E. C. Salyer admitted that he is a member of the Associated Farmers: that he does lots of work for said company and has in the past; that he did contract work for the Boswell Company; sold them products; borrowed money from them; bought farm equipment from them and did business with the Boswell Company in various different ways in-

cluding managing farms for the Boswell Company, but at the time of the hearing and on January 30, 1939, he was not managing any of the Boswell property. He did not know how much money he was indebted to the Boswell Company at that time. Sal-
yer, in giving his version of the incidents above described which happened on the morning of January 30, 1939, said that he could not remember whether or not he was at his ranch on that morning but did remember that one particular morning about that time a number of farmers came to his ranch. He thought there were 200 or 300 but denied that he knew the object of them being at his ranch on that occasion and then said, "to go down there and ask the pickets to leave *they* interfere with the moving of their products and we didn't like it, didn't like them and didn't like them to be there" and said "I believe that is the attitude of the people in this district now, that is people that run the country and people that do things, the people here." Sal-
yer said he could not remember the name of any one individual of the 200 or 300 people who were at his ranch that morning and said that he did not know of the meeting until he drove into his yard and found all of the people there. He did not know who had called the meeting at his ranch and he, himself, did not invite anyone out there but said he might have and he might not have. Later he admitted that he had heard it talked around town but would not admit whether or not he had heard it the night before and stated he knew it when he got there

that morning and said, "I don't remember—I think I drove in and the whole yard was full." Mr. Walsh then propounded the following questions to which Salyer gave the following answers:

Q. By Mr. Walsh: You weren't at home when they came?

A. I don't remember but I don't think I was.

Q. Is that your regular place of residence?

A. It has been for about 20 years.

Q. What time of the morning did they get there? A. I don't know.

Q. What time did you go home?

A. I couldn't tell you that; gee, I couldn't meet so many people and do so many damn things, I couldn't tell you.

Q. Had you been away over night?

A. I don't know whether I was home or not.

Q. Did they leave your place at one time and drive down to the Boswell plant?

A. I don't know whether they did or not.

Q. Did you go with them?

A. I went; left the ranch. I don't remember whether there was anybody with me or whether I went alone this time. I wouldn't want to testify.

Q. Did anyone ride in your car with you when you went down down?

A. I don't recollect.

Q. Now, what happened when you got down to the mill?

A. A big crowd gathered around there was about all I seen of it.

Q. Do you recall having seen anybody there that you knew in the crowd?

A. I don't believe that I could testify that I did; I couldn't tell you definitely. I wouldn't want to testify to that.

Salyer denied having seen Forest Riley or Lloyd Legget at the Boswell plant when the pickets were driven off their picket station. He denied that he had made any statement to Martin and others on the picket line about the Associated Farmers being responsible and denied that he had heard Forest Riley, Lloyd Legget or Wilbur mention anything about the Associated Farmers being behind chasing the pickets from their picket line. The undersigned found, having noticed the demeanor and attitude of E. C. Salyer while on the witness stand and having fully reviewed all of his testimony and having taken cognizance of the fact that knowledge which ordinarily should be more or less fresh in his memory, that he denied that knowledge by withholding same while on the witness stand and because of his own contradiction of his own testimony, the undersigned cannot give much credence to any of his statements made while on the witness stand.

123. Forest Riley, a member of the Associated Farmers admitted that he was at the Salyer ranch on the morning of January 30 and left with the crowd and drove to the Boswell plant; that they were at the Salyer ranch between 8 and 10 o'clock

of that morning and that there must have been between 200 and 300 farmers there. When asked by Board's counsel who told him there was going to be such a meeting Riley answered, "I don't remember, I heard it so many places I can't recall." Riley said he thought he heard about the meeting to be held at Salyer's ranch on the morning of January 30 about 4 days before that date. Riley could not recall whether or not he had asked anyone else to go to that meeting; said he couldn't remember any of the names of the people who were present at the Boswell plant and could not remember who was in the picket cars or anything that anyone else said to the pickets except what he himself said. Riley testified that he asked them if they wouldn't move on before somebody started some trouble so they started on. Board's counsel read a long list of names of people who were at the Boswell plant to Riley and Riley failed to remember anyone of the named individuals as being there when the pickets were driven off the picket line, with the exception of possibly two or three, and said he did not even remember seeing E. C. Salyer there. When asked if he had seen any strangers there that morning Riley answered, "I don't know." On cross-examination Riley denied having heard anyone at the time the pickets were being driven off from in front of the Boswell plant property say that the Associated Farmers were responsible for that gathering. Riley did not specifically deny the statement purported to have been made by him to Martin,

which statement is as follows: "Boys, we are not going to have God damned A. F. of L. in Corcoran."

124. Lloyd Legget, as above stated, is a member of the Board of Directors of the Associated Farmers. He owns a 40 acre farm and leases 160 acres and from time to time does contractual work for the respondent, Boswell Company. The contracts in question cover work such as plowing land for the Boswell Company but in fact admitted that he might have been doing some work for the Boswell Company on the 30th of January 1939 but does not specifically remember whether or not he had such a contract on that date. His own admission shows that in a business way he had been closely connected with the respondent, Boswell Company, over a long period of time and during the last year he worked for the Boswell Company taking care of an irrigation ditch owned by the said Company. Legget admitted that he was at the Salyer ranch on the morning of January 30, 1939, but when asked if anyone else was there he answered, "I imagine there were, I don't know. There are lots of men out there all the time." A portion of his testimony is hereinafter set out in question and answer as follows, to wit:

Q. By Mr. Walsh: Did you see anybody there who were other farmers than you knew?

A. I couldn't tell you.

Q. Did you—would you say there was a crowd of people there?

A. Oh, I imagine there was.

Q. How many did you think there was?

A. Maybe a couple of hundred.

Q. What were they doing there?

A. Just like a man going to hear about anything. You start a fight and you can soon get a crowd.

Q. Well, what did you go there for?

A. I just heard of the meeting out there and I went out there.

Q. Who told you?

A. I don't know. I just heard it on the streets; somebody talking.

Q. When did you hear about it?

A. I guess I must have heard about it just before I went out there that morning but I wouldn't say for sure.

Q. Did you hear about it in Corcoran?

A. I guess I did.

Q. Were you here in Corcoran that morning early?

A. I don't know how early.

Q. Did you remember how long you stayed there?

A. No.

Q. Where did you go when you left the Salyer Ranch?

A. I went to the gin, I guess.

Q. What did you do there?

A. I don't know if I did anything or not.

Q. Had you been at the Boswell offices that morning prior to going to the Salyer ranch?

A. No.

Q. Did you talk to any official of the Boswell Company on the morning of January 30, 1939?

A. Prior to going to the Salyer ranch? I don't remember.

Q. And you are very definite that you were not at the plant then, before you went out there?

A. I don't know if I was there or not.

Q. I would like to have you give us your best recollection on that.

A. I can't remember. It is too far back.

Q. If witnesses were brought here to testify that you were seen coming out of the Boswell plant, would that refresh your recollection?

A. I wasn't there that morning.

Q. The morning of January 30 the men were asked to leave the picket line, were you at the Boswell office.

A. (By witness) That morning?

Mr. Walsh: Yes.

A. I don't think I was.

Q. Now, Mr. Legget, I would like you to be very careful and tell me whether or not you were at the Boswell plant, the Boswell gin, or the Boswell offices on the morning of January 30 prior to going to Mr. Salyer's ranch.

A. I don't remember exactly whether I was there or not.

Legget could not remember what time he arrived at the Salyer ranch and did not think he saw Salyer at the ranch that morning and did not remember whether he talked to anyone he knew at the Salyer ranch that morning. Other than Forest Riley, Legget did not remember an individual who was at the Salyer ranch. Mr. Walsh read a long list of names of

people who were alleged to have been at the Salyer ranch on the morning of January 30, 1939, other than Forest Riley. Legget either answered that he did not see the named individuals there or that he did not remember of seeing them there. When asked if R. C. Haag, a member of the Board of Directors of the Associated Farmers, was from Hanford, Legget answered, "I don't know. I guess I know" and said "I don't remember seeing him there." When asked if he had told anyone that there was to be a meeting held at the Salyer ranch he replied, "I don't remember telling anybody." Then the following question was asked:

Q. Did you drive to Mr. Salyer's ranch alone? A. I think I did.

Q. Did you bring anybody back with you?

A. I don't remember whether I did or not.

Q. Did you talk to Steven Griffin?

A. I said a few words to him.

Q. Did you ask him to leave?

A. I don't think I did.

Q. Did you hear anybody else ask the pickets to leave? A. No, I didn't.

Q. Did you talk to any of the other pickets?

A. No.

Q. Did the pickets leave?

A. I think they did.

Q. Now, was your car in front or in the rear of the picket car? A. I imagine, in front.

Q. How far in front?

A. I don't know.

Q. What is your best recollection on that?

A. Fifteen or twenty feet, I guess. I wouldn't say exactly how far.

Q. Were any other cars belonging to this crowd of farmers parked in front of your car?

A. I don't know.

Q. Where did the other farmers park their cars? A. I don't know.

Q. Did all of the farmers remain in their cars?

A. I don't know that either.

Q. Did you say anything further to Steve other than ask him what he was doing there?

A. I don't remember whether I did or not.

Q. Did you hear anybody else say anything there? A. No, I didn't.

Q. Well, now, will you tell in your own words just what took place after you arrived and parked your car and got out.

A. I done told you.

Re-direct

Witness: I don't remember what took place.

Q. Well, now, what I would like to know is this, Mr. Legget, tell me why you went from the Salyer ranch down to the Boswell Company gin?

A. Just followed the bunch down there.

Q. Well, what purpose did you have in speaking to Steve?

A. Well, I don't know. Just spoke to him because I knew him well.

On cross-examination when questioned by counsel

for the Associated Farmers, Legget was very positive in his answers when he stated, in response to a question, that the Associated Farmers of Kings County were not responsible for the meeting at the Salyer ranch or at the Boswell plant and he again was very positive that the name of the Associated Farmers "was not mentioned within his hearing" that morning at the Boswell plant.

125. George Henry Cutter, a member of the Associated Farmers who conducts a grain and feed business in Corcoran, California, did not go out to the Salyer ranch on the morning of January 30 but did go to the Boswell plant at the time the pickets were driven off from in front of the Boswell property. He stated his warehouse foreman came to his office and told him about all the cars crossing the track on their way to the Boswell plant. Cutter stated in effect, "I thought there were a lot of union men descending on the Boswell plant—that is the report I first had." That he then got in his car and drove out there and when he got there saw a different picture than he thought he would find and said, "I just saw a bunch of men just talking to more men in a car. I looked around, maybe there about 3 minutes, and having some work to do I went back to the office again." Cutter said that he did not get within 60 feet of the crowd and did not remember any of those who were there and stated, "I asked some party what it was all about, and I didn't recognize that party." On cross-examination, Clark, attorney for the Associated Farmers, asked Cutter the following question:

Q. I understand, Mr. Cutter, that this man you talked to was a stranger to you.

A. That is right.

Cutter's testimony that he talked to a stranger was not the truth as shown by Grover Taylor Archer's testimony which is hereinafter discussed.

126. Grover Taylor Archer, a farmer and member of the Associated Farmers, admitted that he was at the Boswell plant with the other farmers when the pickets were forced to leave the picket station in front of the Boswell plant and while there he met George Henry Cutter who stood there when he was there, that he talked with George Cutter and said he came there to look, not knowing what it was all about or anything. "I believe he asked me what was going on there. He just came there apparently not knowing what was going on," and then said that he had known Mr. Cutter for 20 years; that over that long period of time he had had business dealings with him and he and Cutter had been friendly all during that time.

128. A review of the testimony of Salyer, Riley, Legget and Cutter, part of which is above set forth by question and answer, is a typical example of practically all of the testimony adduced at the hearing by the Associated Farmers, and makes it impossible for the undersigned to give much, if any, credence to the testimony of the said Salyer, Riley, Legget, Cutter and the other witnesses produced at the hearing by the Associated Farmers. However, the testimony of Salyer, Riley, Legget and Cutter does aid

by the way of admission that the pickets were driven from the Boswell Company plant on January 30, 1939. However, the undersigned, after considering the testimony of Salyer, Legget and Riley, and by observing them on the witness stand, cannot give credence to their testimony and believes the testimony of Martin, Griffin, and Spear as to their description of the events which took place on the morning of January 30, 1939, and further believes that when Salyer, Legget, and Riley were asked either by Martin, Griffin, or Spear who was behind the movement to drive the pickets from their picket stations, Salyer, Legget and Riley said, "We, the Associated Farmers," and said, "There are 200 of us present and we represent a thousand more."

129. The respondent, Boswell Company's contention that it had no connection whatsoever with the action of the Associated Farmers in driving the pickets from in front of its plant on the morning of January 30, and that said respondent took no part in such action is not supported by the evidence. The evidence clearly shows that Case, a draftsman engineer for the company; J. E. Hubbard, farm advisor of the Boswell Company who gives orders to the foremen on the Boswell ranches and who advises farmers who borrow money from the Boswell Loan Corporation regarding the necessity of further irrigation and, in fact, who is a high paid official of the respondent company; and others were in the office of Gordon L. Hammond on the morning of January 30, 1939. Case, Hubbard and others in the office

watched through the windows while the Associated Farmers were in the act, by mob force, of evicting the pickets from in front of the Boswell plant.

130. Hubbard testified that he was there only for a few minutes and that he only saw the cars when they first came and then left the Hammond office. Case, on the other hand, in contradicting the testimony of Hubbard, stated that he, Hubbard and the others watched the whole proceeding from the time that the cars first arrived until the pickets had been driven off and the cars of the Associated Farmers had left the Boswell property. There is some testimony that Hubbard was seen among the farmers at the time the pickets were driven off on the morning of January 30, 1939. If Hubbard's testimony is correct that he left the Hammond office, it is very probable that he was seen among the crowd during the time the pickets were being driven from in front of the property. If, on the other hand, Case's testimony is correct, then there is no dispute that Hubbard watched the whole proceeding from the window of the Hammond office.

131. The undisputed testimony of Prior, which has heretofore been set forth, establishes the fact that J. G. Boswell, president of the respondent, during a conference between him and Prior at his office, said, while he and Prior were discussing the boycott, that if the Union were going to use goon squad tactics it might be necessary to obtain assistance in its labor dispute with the Union.

132. W. E. Grisham, appearing as a witness on

behalf of the respondent, who, in fact, supervises one of the ranches owned and operated by said respondent, admitted that he is a member of the Associated Farmers and was among the crowd on the morning of January 30, 1939, at which time the pickets were driven from in front of the Boswell property.

133. Many of the officials of the respondent are members of the Associated Farmers. Among those officials who are members of the Associated Farmers are Louis T. Robinson, general manager; Gordon L. Hammond, plant manager; and J. W. Hubbard, whose status with the respondent has been above described. Among the supervisory employees of respondent who are members of the Associated Farmers are Tom Hammond, Joe Hammond and other ranch foremen of the respondent company.

134. The respondent, Boswell Company, on or about September 20, 1938, paid \$287.09 to W. P. Camp, treasurer of the State organization, whose office is located at Bakersfield, California, and on or about March 21, 1939, paid the State organization at its home office 472 Russ Building, San Francisco, another sum of \$240.42. The fee paid by the ginning company to the State organization is determined by the amount of cotton ginned during the ginning season and the total sum of \$527.51 was the amount of dues assessed by the State organization against the Boswell Company. In addition to that sum of money paid to the State organization, the respondent paid an unidentified amount to the Associated Farmers of Kings County.

135 The respondent, Boswell Company, through its Farm Loan Corporation, finances crops for many members of the Associated Farmers. At the time of the application for a loan the farmer submits an approximate cost of the growing of the crops to the loan company. When the loan has been completed, the amount of money as a usual thing is credited to the account of the borrower and he in turn gives the Boswell Company a chattel mortgage on his crop to secure that loan. At various times during the growing season the farmer who borrowed the money furnishes a list of his expenses, together with the names of his creditors as well as the names of his employees and the amounts owed to each one. The Boswell Company pays the expenses so listed, including wages to the help in the growing and harvesting of the crop. When the crop is harvested, the products are delivered to the Boswell Company. The Boswell Company either sells the produce or stores same for the farmer to await better prices. In either event when the crop is sold an accounting is had between the farmer who borrows and the respondent, Boswell Company. In addition to the usual expenses incurred by the farmer, he is also confronted with the question of irrigation. The Boswell Company controls the water supply and charges the farmer at the rate of \$8.00 per acre for each watering of the crop. Some seasons one watering is sufficient, while in other seasons it is necessary to water the crop twice during the growing period. That charge is also booked against the farmer and is paid for by the farmer at the time of the accounting.

136. As shown from the above-stated facts, the Boswell Company and the Associated Farmers are so closely associated in business transactions, and by the fact that many of the officials and supervisory employees of the respondent, Boswell Company, are members of the Associated Farmers that the Associated Farmers and the respondent, Boswell Company, have an interest in common in seeing that no interference is caused to disrupt the flow of the produce from the farm to the Boswell plant and from the Boswell plant to the open markets and the Boswell Company was as much interested in the eviction as was the Associated Farmers. In fact, during the whole affair the officials of the respondent, by their own admission, admitted that they stood silently by and watched the Associated Farmers come upon the respondent's property and by mob force drive the pickets, who were acting within the law, from in front of its plant. The respondent, Boswell Company, made no protest in any form in opposition to the acts of the farmers; and by its failure to act condoned all the things done by the Associated Farmers on the morning of January 30, 1939. It received the benefits in that, with the pickets gone, the flow of produce to and from its plant would continue in the flow of commerce without interference. Therefore, the undersigned finds, from the above-stated facts and from the whole record, that the respondent, Boswell Company, fully condoned the acts of the Associated Farmers in driving the pickets from in front of the Boswell plant and to some extent

actually participated with the Associated Farmers in driving the pickets from the plant.

137. The undersigned further finds that the activities above described by the respondent, Boswell Company, and the Associated Farmers did interfere with, restrain and coerce and are interfering with, restraining and coercing the employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and thereby is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

138. During the day of January 30, 1939, a number of the said farmers and some of the help on the Salyer ranch moved a large tent from the Reden ranch, then under lease by the respondent, Boswell Company, to the Salyer ranch and erected same for a barbecue, or victory party, to be held on the night of January 30 at the Salyer ranch. In the first place, the tent in question had been rented from the Pacific Tent and Awning Company of Fresno, California, and delivered by that company to the Reden ranch. Riley testified that he made the arrangements with the company for the use of the tent as an individual and not in any way connected with the Associated Farmers. Salyer stated that on the evening of January 30 someone said they wanted a tent but did not know who said it and he did not know who put it up. Later he admitted that his helpers or farm help erected the tent for the meeting that took place on the evening of January 30. He said he did not know under whose auspices it was held and he did not know

who the people were who said they would like to have a meeting. He admitted that they had speakers at that party and said that he furnished the roast pig; that someone would name something else that was needed and in five minutes it would be there. He said that they had six or seven hundred people there that night.

139. Included among some of those who were there were Boyett, president, and Botts, secretary-treasurer of the Associated Farmers, Legget, one of the Board of Directors of the Associated Farmers and many other members of the said Association. The Associated Farmers contend that the barbecue in question was not held under the auspices of the Associated Farmers nor did the Associated Farmers have anything to do with the planning of that barbecue or victory party. Botts admitted on cross-examination that the Associated Farmers owned considerable equipment used for the purpose of holding such meetings; that such equipment was under his charge and was stored in one of the garages on the Reden ranch, which ranch is under the control of the respondent, Boswell Company, by the way of a lease; that he was at the barbecue or party on the night of January 30, 1939, at the Salyer ranch and that he identified the equipment used that night was the same equipment owned by the Associated Farmers and as above stated stored on the Reden ranch. Botts, did not remember, as he claimed, who made the arrangements to use the equipment in question nor did he remember who had moved the equipment from

the Reden ranch to the Salyer ranch but admitted that Boyett, president of the Associated Farmers as well as all of the members of the Associated Farmers were at that barbecue at the Salyer ranch.

140. It appears from the record that a second barbecue was held on February 18, 1939, by the Associated Farmers on the Salyer ranch. They used the same tent that was used the night of January 30 and Botts admitted that the cost of the rental and transportation of the tent from the Pacific Tent and Awning Company of Fresno to the Salyer ranch and its return to the Pacific Tent and Awning Company was paid for by the Associated Farmers by the issuance of a check²² signed by Boyett as president of the Associated Farmers and Botts as treasurer, drawn to the order of the Pacific Tent and Awning Company of Fresno. Botts' testimony on that point is best shown by the way of questions and answers which are as follows:

Q. By Mr. Mouritsen: Well, I will ask you then if it was not in payment of the cost of transporting that tent to the Salyer ranch and returning it to Fresno.

A. It was.

Q. And other than the \$50 there was no cost connected with the transportation or setting up of that tent on the Salyer ranch, was there?

A. Not to my knowledge.

Botts further admitted when examined by Board's

²²Board Exhibit No. 31.

counsel that he could not remember that the meeting of January 30 at the Salyer ranch was discussed at the meeting of the Board of Directors of the Associated Farmers on January 26, 1939.

141. Martin, a business man from Los Angeles, was the principal speaker at the barbecue or party on the Salyer ranch on the night of January 30, 1939; Forest Riley stated that he invited Martin to speak at that meeting but that such invitation was given to Martin by Riley as an individual and not on behalf of the Associated Farmers. Riley said that newspaper reporters were at the meeting to publicize the activities of the Association, and in the evening edition of the Fresno Bee, dated January 30, 1939, the following article appeared:

Kings County Associated Farmers today announced a membership campaign will be conducted during February with Nick Wies of Corcoran as full time membership drive campaign manager and Brice Sherman as a part time solicitor.

The Association will meet tonight at Corcoran and Harry E. Martin of Los Angeles, who recently returned from Washington where he testified before the Dies Committee investigating un-American activities, will speak.

Riley is in error when he said he invited Martin as an individual and not on behalf of the Associated Farmers. It is not clear what Martin said at the meeting, but there is some evidence that he talked against the Union and the organizers and that force

should be used to rid the community of such people.

142. The record shows that Martin was invited to give his speech at that gathering on the Salyer ranch by Forest Riley, a member of the Associated Farmers, but Riley admitted as above stated, that at the meeting of the Board of Directors of the Associated Farmers on January 26, 1939, newspaper reporters were at that meeting to publicize the activities of the Associated, and in view of Riley's admission of the presence at that meeting of the newspaper reporters and in view of the article above set out appearing on January 30, 1939, in the Fresno Bee, the undersigned finds that Martin was invited to speak at the barbecue by Riley, not as an individual, but on behalf of the Associated Farmers of Kings County, Inc., a corporation.

143. The Associated Farmers contend: First, that it, as such, was not responsible for the eviction of the pickets from in front of the Boswell plant on January 30, 1939; second, that the Associated Farmers was not involved in interstate commerce and, therefore, not subject to the jurisdiction of the National Labor Relations Act or to the National Labor Relations Board; and third, that the Associated Farmers was not responsible for the victory party or barbecue held on the Salyer ranch on the night of January 30, 1939. The undersigned finds that none of the contentions of the Associated Farmers are supported by the record.

144. As to the first contention, the evidence clearly shows that the Associated Farmers discussed at

its meeting on January 26, 1939, the picket situation at the Boswell plant and that Liggett, a member of the Board of Directors, as well as a great many other members of the Associated Farmers, took part in the eviction of the pickets from the Boswell plant on the morning of January 30, 1939, and further shows that the whole affair was planned under the direction of the Associated Farmers.

145. As to the second contention, Section II under Definitions of the National Labor Relations Act states: "the term 'employer' includes any person acting in the interest of the employer directly or indirectly." The Associated Farmers without question were acting directly in the interest of the respondent, Boswell Company, who is without question involved in interstate commerce and, therefore, under that provision of the Act there is no doubt that the respondent, Associated Farmers, are subject in this case to the jurisdiction of the National Labor Relations Act and therefore to the jurisdiction of the National Labor Relations Board. It is very evident that Congress in passing Section II and making it a part of the Act, and by describing the full meaning thereof, intended that any person or group of persons, whether or not they are in interstate commerce, if acting in the interest of an employer, operating in interstate commerce, either directly or indirectly, comes within the meaning of the National Labor Relations Act, and the undersigned so finds.

146. As to the third contention, the evidence clearly shows by the admission of Botts, secretary-

treasurer of the Associated Farmers, that the equipment owned by the Associated Farmers and stored on the Reden ranch, under lease to the respondent, Boswell Company, was the same equipment used at the barbecue party on January 30, 1939; that the president, secretary-treasurer and many members of the Board of Directors and other members, both regular and associate, of the Associated Farmers attended that barbecue and that said barbecue on said night of January 30 followed the driving of the pickets from the Boswell plant on the morning of January 30, 1939; that Martin, speaker at that meeting, was invited by the Associated Farmers and the cost of transportation of the tent used at that meeting was paid for by a check drawn to the order of the Pacific Tent and Awning Company of Fresno and endorsed by the secretary-treasurer and president of the Associated Farmers. Therefore, the undersigned finds that the Associated Farmers, together with the respondent, Boswell Company, were responsible first, for the planning and eviction of the pickets from in front of the Boswell plant on the morning of January 30, 1939, and second, that it is immaterial as to whether or not the Associated Farmers are involved in interstate commerce; that they had a common interest with that of the respondent, Boswell Company, and acted in the interest of the respondent, Boswell Company, as well as their own, in driving the pickets from in front of the Boswell plant on the morning of January 30, 1939; third, that the Associated Farmers were responsible for

the calling of the barbecue party or meeting on the night of January 30, 1939, in which the respondent Boswell Company participated, and further finds that the activities above set forth have interfered with, restrained and coerced the employees of the respondent Boswell Company in the exercise of the rights guaranteed in Section 7 and Section 8 (1) of the Act.

Corcoran Telephone Exchange

147. Margaret A. Dunn was first employed by the Corcoran Telephone Exchange, hereinafter referred to as the Exchange, on August 23, 1924, as a telephone operator. In 1926 she was promoted to head operator and in fact, by Glenn's own admission, managed the Exchange for him. Mrs. Dunn is the mother of a number of children including Dorothy Dunn, Margaret Dunn and Jack Dunn.

148. Dorothy Dunn, her daughter, was attending college at Los Angeles, California, in 1938 and 1939. About the first of February 1939 Dorothy came to her home at Corcoran for a vacation. On her way home by bus from Los Angeles Dorothy met Mr. Sprecker, an attorney for the Board. When they reached Corcoran, a small city of 2,000 population, they met Prior, above described, at the depot. Prior had his automobile. Sprecker, Prior and Dorothy drove to the Dunn home. Prior remained in the car and Sprecker and Dorothy went into the Dunn home. Margaret and Jack Dunn, a son and brother, and a Mr. Secord, an engineer em-

ployed by the respondent, Boswell Company, were there. Sprecker left almost immediately. After he left Secord told Dorothy of the ill feeling toward Prior and that it was bad for her to be with him.

149. On February 8 Dorothy and her sister, Margaret, drove by the Boswell plant and stopped and waved at Prior. Prior got out of his car and walked to the Dunn car and while talking to the Dunn girls Forest Riley and his daughter Hazel drove by. They waved to the Dunn girls. Two or three days later Dorothy met Secord in a soda fountain establishment in Corcoran. Secord told Dorothy that she was very much in the wrong with the people of Corcoran; that she had been seen at the picket line and that many of the employees of the Boswell Company had seen her there and were very much worked up over the fact that she had been at the picket line and, as she testified, that "I should apologize to W. W. Boswell for he was very angry at the fact that I had been seen there." W. W. Boswell is a brother of J. G. Boswell, president of the Boswell Company.

150. During a conversation on or about February 15, 1939, between Mrs. Dunn and Mr. Galusha, manager of the San Joaquin Gin Company, Mrs. Dunn told Galusha that she had heard a petition had been circulated and given to Glenn to have Mrs. Dunn fired. She asked Galusha to talk to Boyett and find out what he knew. About an hour later Galusha, after talking to Boyett, told Mrs. Dunn that Boyett admitted such a petition had been circu-

lated because Mrs. Dunn's two daughters had been seen with the pickets at the Boswell plant; and that the Boswell Company were blaming Mrs. Dunn for delivery of messages through her daughters to the pickets.

151. The next day about 2 o'clock in the afternoon Mrs. Dunn talked to Glenn, president of the Exchange, about the matter. Glenn told Mrs. Dunn that he had been approached by a group of men who wanted Mrs. Dunn discharged because of leakage on the switchboard and about the girls being seen with the union men. Glenn said that he told the men that Mrs. Dunn had worked for him for 15 years; that he relied on her in every way and would not discharge her unless they brought actual facts in the case; that he believed in her thoroughly; that her work was satisfactory; and that he would stand by her. Mrs. Dunn told him the facts about the girls meeting Prior and he said he believed her story. Glenn shook her hand, patted her on the back and said "Pay no attention to it." They talked about the labor trouble at the Boswell plant and on that point Glenn told Mrs. Dunn, that because of the labor trouble the men were worked up over the situation and that any little thing that might take place would cause a lot of disturbance in town.

152. At 8 o'clock on the morning of February 16 Dunn called Glenn and requested that he come to her home. Glenn agreed and when he reached the Dunn home, told Mrs. Dunn that he had talked to

Forest Riley and Riley had informed him that he (Riley) knew about the men coming to see him about the discharge of Mrs. Dunn. Glenn said that W. W. Boswell, a brother of J. G. Boswell, and in charge of the cattle owned by respondent, told him that he would get Mrs. Dunn's job if it was the last thing he did; that he was going to put detectives on the case to watch the girls and prove their point; that he was going to have a dictaphone installed in the Dunn home, and then said he had no objection to Mrs. Dunn but they were not going to tolerate any of the Dunsns associating with the pickets. Glenn asked Mrs. Dunn if the story that the girls had been seen on the picket line was true. Mrs. Dunn again explained the incident to Glenn. On the morning of March 1 at the office of the Exchange Glenn asked Mrs. Dunn for her resignation. She refused and asked him why. Glenn told her that pressure was being brought to bear heavily on him and he would have to ask her to resign, that "he, Glenn, just couldn't stand what was being said and said they were certainly awful." Mrs. Dunn asked him what was awful and he refused to answer but finally told Mrs. Dunn that there was nothing personal against her or her work and asked Mrs. Dunn if it were true that her daughter, Margaret, was keeping company with Prior. Mrs. Dunn told him that it was not true. Then he asked Mrs. Dunn if Dorothy belonged to a secret organization in school. Mrs. Dunn told him that she did not. The conversation ended and Mrs. Dunn went to work.

153. On March 2, about 7 o'clock in the morning, Glenn called Dunn at her home and told her she was getting too old for the work and was sick and that she should stay at home.

154. Glenn, in giving his version of the conversation of February 16, stated, "I told her that I had not heard anything about any petition of that kind, that she need not worry—then she went on to say that the girls had talked in the morning about the pickets being down at the gin and she told them, asked them why they didn't go down there and see. The girls said they had not seen any pickets before, how it was worked so she advised them to go down there and see. I told her that the fact of the petition being circulated would have no bearing on her in any way, believed I could not take cognizance of that because we were a public service corporation and that we must keep neutral in every thing of that kind." The undersigned asked the following questions:

Q. What did you mean then when you said or started to say she need not worry.

A. Because she was fearful that this petition she told me that they were petitioning me to fire her and I told her she need not worry about that. Told her I would not take cognizance of such a petition; for her to go right ahead and just not say anything.

Q. And you did not intend to fire her?

A. No sir.

Glenn said that he had heard nothing about Mrs. Dunn's daughters being seen talking to the pickets until Mrs. Dunn had told him about it during that conversation.

155. As to the conversation in the office on March 1 between Mrs. Dunn and Glenn, Glenn admitted that he did have a conversation in the back of the office; that he told Mrs. Dunn that Mrs. Woodruff had told him that she had made every effort to get along with Mrs. Dunn; that she found it impossible to do so and that she wanted to quit, and said: "I told Mrs. Dunn that on account of her physical condition and the use of liquor that was so offensive to the girls that I wanted her to resign." Mrs. Dunn refused and as Glenn claimed she told him that she would make every effort to get along and that she would apologize to Mrs. Woodruff and the girls. Glenn said that he left and when he returned that evening Mrs. Dunn ran past out of the office sobbing hysterically and that Mrs. Dunn a little later called him and asked him if she could come back to work; that he told her "no," that he would not talk to her any more at that time but that it was better for her to stay at home and rest.

156. On the morning of March 2 Glenn called Mrs. Dunn, and told her that she could not come back to work. Glenn, on direct examination, testified that he had a conversation with Mrs. Dunn around the first or last of January 1939 and during that conversation told Mrs. Dunn that Albert Armour of the Boswell Company had brought

charges that she was running out nights with Galusha and that they objected very strenuously because Galusha was superintendent of the Anderson-Clayton Ginning Company and since she was handling their intimate business calls over the phones they objected to her running around with a competitor very much. Glenn stated that Mrs. Dunn told him that as long as it was after working hours that it was no concern of the telephone company. Glenn told Mrs. Dunn as far as the business element was concerned it was his business and that if the thing was going to continue he wanted her to hand him her resignation and at that time he also spoke to her about dissention in the office.

157. The undersigned asked Glenn the following question:

Q. Did you blame Mrs. Dunn for that leak?

A. No sir.

Glenn admitted on cross-examination that often-times during the year of 1938 because of wind, rain, and other weather conditions wires and cables crossed and when such wires crossed that there *was* an interruption in the service, in that others could take up the receiver and hear a conversation between parties even though they were on a different line and admitted that the Exchange had had numerous complaints because of that type of trouble.

158. Glenn further testified on direct examination that they had numerous complaints against Mrs. Dunn because of defect as a telephone operator; that some of them came from the Boswell

Company and among some of the others was Blakely Crary, cashier of the First National Bank of Corcoran. Crary's testimony will hereinafter be fully discussed.

159. Glenn stated on direct examination that on the first of March Mr. Woodruff came to him in the bank building and told him that Mrs. Woodruff had decided to resign her position because of the trouble with Mrs. Dunn and it is here pointed out that Woodruff, who works for the Exchange, is the husband of Mrs. Woodruff who complained against Mrs. Dunn.

160. Mr. Glenn, when questioned by the undersigned admitted that he had had numerous complaints against other operators and that he has never had a year since he had been in the business without receiving complaints both against the operators and because of poor service and that on March 1, 1939, he had not made up his mind to fire Mrs. Dunn, in fact, admitted that he made up his mind over night between March 1 and March 2. Mrs. Woodruff was given the position formerly held by Mrs. Dunn.

161. Glenn admitted on cross-examination that he talked to Louis T. Robinson prior to the Dunn discharge about the labor trouble at the Boswell plant and to a great many business people in the city of Corcoran, but denied that he ever talked to a single farmer in that vicinity or to Forest Riley about said trouble. Glenn who farms some 5,000 acres and finances his crop through the Boswell

Loan Corporation admitted that he talked to practically all the business men in Corcoran about the labor trouble, including Robinson of the Boswell Company but did not talk to a single farmer regarding the matter. It is evident that Glenn withheld information during the giving of his testimony regarding important facts pertaining to this case, and that his testimony is greatly reduced in value.

162. Crary has lived in Corcoran since 1930. From 1930 to July 21, 1934, he served as an assistant cashier of the old First National Bank of Corcoran and since July 1, 1934, he has been cashier of the First National Bank of Corcoran. Appearing as a witness for the Exchange, he testified that for 2 years preceding March 1, 1939, he complained several times against the service rendered by Mrs. Dunn and explained this several times as meaning a minimum of three and a maximum of five times. In January 1939, when Glenn was in his bank he said he told Glenn that he had attended a dinner a short time prior to that and the subject of the poor service of the telephone exchange was discussed and one member of the party said that they intended to complain to the Railroad Commission unless the service was improved and that Mrs. Dunn was the only subject of the complaint. He further said that he had never had any trouble with any other operator. On cross-examination Crary could not remember a single individual who was at the dinner which he told Glenn about except possibly his wife. He said that the bank maintained two trunk lines

and four telephones in the bank and that he did not know whether Mrs. Dunn was the day or night operator, and said "I know I recognized her voice when she was on."

163. When questioned by the undersigned he admitted that he made from 20 to 30 calls a day and never had a complaint against any other operator except Mrs. Dunn and that he only recognized her as being Mrs. Dunn by her voice and then said he did not know whether she was the day or night operator. It is apparent from the ordinary surrounding circumstances of his position that he (Crary) is well acquainted with the people in Corcoran and surrounding community and his denial that he remembered any of the individuals at the dinner cannot be given credence.

164. John Earnest Dunn, husband of Margaret A. Dunn, who holds the position of foreman of machinists for the California Company Pipe Lines Department, subsidiary of the Standard Oil Company of California, testified that on the evening of March 1 he went to the office of Glenn behind the bank building in Corcoran and asked Glenn what he had against his family. Glenn said, "You know there has been trouble, labor trouble at the Boswell gin." Dunn said, "Well, Mr. Glenn, I was under the impression that this trouble was all over. I haven't heard anything about it in about 2 or 3 weeks and therefore I considered it was closed." Glenn said, "Oh, no it is not closed. It is getting worse" and said "The union has been threatening to organize

farm labor in this district for some months. "They haven't been able to do so and that they figure how the best way they can get at this question is to organize the Boswell Company and their employees in turn will refuse to handle farm products which are produced under non-union conditions." Dunn interrupted him and said, "Mr. Glenn, I am not interested in all that. I came down here to ask you why you have discharged my wife" and Glenn said, "Wait a minute. This all ties in together" and said "You know your two daughters were seen down at the Boswell gin talking to the pickets." Dunn said, "Well, then, Mr. Glenn, in other words pressure is being brought to bear on you to discharge my wife because my daughters were seen talking to the pickets." Glenn said, "Yes, they are threatening to ruin my business if I don't do so."

165. The next morning, March 3, Glenn picked up Dunn in front of his office and took him for a ride in his automobile up toward the San Joaquin gin and back again. Glenn told Dunn during that ride that he sent for him because he wanted to correct an impression that he knew Dunn had taken from the conversation the evening before, that is that Glenn thought Dunn understood from their conversation that the Boswell people were bringing pressure to bear on him to discharge his wife and he wished to correct that impression. Dunn said, "Well, Mr. Glenn, then this petition that has been circulated has had nothing to do with this case." Glenn said, "There has been no petition circulated

that is all, there is nothing of that kind in it at all." Dunn said, "Well, Mr. Glenn, there are several friends of ours have told us that this petition was circulated and now you are either badly mistaken or our friends are damn liars." Glenn said, "Nine men came to see me 10 days ago, approximately 10 days ago" and he said "I laughed at them and a couple of days three of these men came to me, met me on the street corner and demanded that I do something about this." Glenn said that he fired Mrs. Dunn because of her physical condition and that she drank liquor while on the job. When asked by Mr. Clark whether or not the first thing he said to Mr. Dunn on that occasion was in substance or effect this "You know there has been trouble, labor trouble at the Boswell gin" Glenn answered that he did not remember. On cross-examination he said that was not the first thing he said. The testimony of Mrs. Dunn shows that she only drank wine on two occasions while at work and on one of these occasions Mrs. Glenn gave her the liquor she drank. Glenn admitted that he called the Dunn home and asked that Mr. Dunn come down to his office on the morning of March 2 and admitted that he picked Dunn up in his car and admitted that he had the conversation with Dunn in substance as Dunn related it. Glenn, on cross-examination, denied that the nine men had come to see him regarding the discharge of Mrs. Dunn. In view of the testimony of Glenn and the undersigned's observation of him while on the witness

stand and considering his almost apologetic manner in his testimony regarding Mrs. Dunn and in view of the various reasons he gave for her discharge which are entirely unsupported by his own testimony, therefore the undersigned believes the testimony of Mrs. Dunn in relating her conversations with Glenn and the undersigned believes the testimony of John Earnest Dunn regarding his version of Glenn's statements made to Dunn during the course of their conversation, which statements are as follows: "You know there has been trouble—labor trouble at the Boswell gin," and then in response to a question by Dunn, Glenn said, "Oh, not it is not closed. It is getting worse." That statement was referring to the labor trouble. The undersigned further believes Dunn when he stated that Glenn told him that nine men had been to see him and demanded that he discharge Mrs. Dunn. Therefore, the undersigned finds that Margaret A. Dunn was discharged from her position as head operator of the Corcoran Telephone Exchange because of the pressure brought to bear upon Glenn, president of said Exchange, by the same members of the Associated Farmers and the Boswell Company and that her discharge was the direct result of the fact that her daughters Dorothy and Margaret were seen talking to the pickets in front of the Boswell plant on or about February 8, 1939.

166. On March 13, 1939, Margaret A. Dunn filed charges against the Exchange with the National Labor Relations Board.

167. Mrs. Dunn testified that she had been advised she would need two witnesses to substantiate her charges in a hearing before the National Labor Relations Board. On March 21, Mrs. Dunn talked to Forest Riley at her home and asked Riley if he would be her witness in a hearing before the Labor Board. She said Riley told her she might as well have a revolution as for the National Labor Relations Board to come down there, and asked her why she wanted a hearing. Riley went on to explain the feeling they had against the Labor Board coming to Corcoran butting into their affairs and said, "They are not going to tolerate the National Labor Relations Board ever coming in there as they felt like they could handle their own business in their own way." Riley during the conversation brought into the discussion the question of the Dunn girls and said that he saw them talking to Prior at different times. Mrs. Dunn testified that she made Riley admit that he only saw the girls talking to Prior on the one occasion. Mrs. Dunn said, "All right just as such pressure was brought to bear on Mr. Glenn to dismiss me, you go down there and bring pressure to bear to take me back on my work." Riley said he did not think he could do that.

168. On the same day, March 21, Russel Slaybough came to the Dunn home and during a conversation that afternoon in the back yard of the Dunn home, Mrs. Dunn asked Slaybough if she had this hearing would it hurt different people around Corcoran and would it cause this upheaval that Mr.

Riley claimed and he answered, "yes, it would." Mrs. Dunn told Slaybough that if that was the case she would ask the National Labor Relations Board to withdraw it and not have a hearing. Slaybough did not deny Mrs. Dunn's testimony. About 3:30 or 4 o'clock of that same afternoon, March 21, 1939, Boyett, president of the Associated Farmers of Kings County, came to the Dunn home and talked to Mrs. Dunn. Mrs. Dunn told Boyett she had talked to Riley and to Slaybough and that she had told them that she would withdraw the charges because she did not want to cause a disturbance in the town. Mrs. Dunn's testimony was not denied by Boyett. Boyett told her that Clarence Salyer and Forest Riley had approached him with this petition and he told them to tear it up and have nothing to do with it and that he would not either. After those conversations on March 21 Margaret Dunn sent the following telegram to the Regional Office of the Board at 1095 Market Street, San Francisco:

"Do not send representative Case XX-C-619 everything satisfactory.

Margaret A. Dunn."²¹

169. On April 4, 1939, Margaret A. Dunn sent the following letter to the National Labor Relations Board:

"In regard to Case No. XX-C-619, will say that it has not been settled satisfactorily to date and would appreciate you holding case open un-

²¹ Board Exhibit 21.

til you hear from me again.

Certain interested parties have said I would get my work back if I did not press charges but I have not gone back to work yet.

Respectfully

Margaret A. Dunn ²²

170. On April 14, Mrs. Dunn wrote another letter to the Board's Regional Office in San Francisco, which letter²³ reads as follows:

"I would like very much to have you drop my case against the Corcoran Telephone Exchange as there are too many personal friends as well as members of my family involved. We feel sure a satisfactory settlement will be made in a short time. We feel you would help us more by dropping the case than continuing it. I will not be here for interviews with anybody.

Sincerely

Margaret A. Dunn."

171. Even though there is considerable proof that members of the Associated Farmers brought pressure to bear upon Mrs. Dunn to withdraw her charges filed against the Corcoran Telephone Exchange because of her discharge, there is not substantial evidence to prove that the Associated Farmers of Kings County, Inc., a corporation, as such, had taken any part in the acts of its members in so exerting pressure and neither is there substantial

²² Board Exhibit 22.

²³ Board Exhibit 23.

proof to show that the Associated Farmers of Kings County had authorized, either directly or indirectly, the motion taken by some of its members regarding the Dunn discharge, and the undersigned so finds.

172. By the activities above set forth in Section IV, A, B, and C, the respondent, Boswell Company, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7, Section 8 (1) and Section 2 (6) and (7) of the Act.

173. James W. Gilmore was refused employment on July 1, 1938, L. E. Ely was discharged on November 26, 1938, Boyd L. Ely was locked out of his employment the night of November 14, 1938, and Walter Winslow was locked out of his employment on November 15, 1938, Steven J. Griffin and W. R. Johnston were discharged on November 17, 1938, O. L. Farr, George Andrade, Joe Briley, R. K. Martin, L. A. Spear and H. M. Wingo were evicted by force and violence and threats of force and violence from their employment by respondent, Boswell Company, on November 18, 1938, E. C. Powell was discharged on November 26, 1938, and Eugene Clark Ely was discharged on January 30, 1939, by respondent, Boswell Company, for the reason that said James W. Gilmore, L. E. Ely, Boyd L. Ely, Walter Winslow, Steven J. Griffin, W. R. Johnston, O. L. Farr, George Andrade, Joe Briley, R. K. Martin, L. A. Spear, H. M. Wingo, E. C. Powell, and Eugene Clark Ely joined and assisted a labor organization known as Cotton Producers and Grain Mill Workers Union,

Local 21798, affiliated with the A. F. of L., and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

174. By the refusal to reemploy James W. Gilmore on July 1, 1938, the discharge of L. E. Ely on November 26, 1938, and the lock-out of Boyd L. Ely, on November 14 and Walter Winslow on November 15, and by the discharge of Steven J. Griffin and W. R. Johnston on November 17, and by the eviction of O. L. Farr, George Andrade, Joe Briley, R. K. Martin, L. A. Spear and H. M. Wingo, and by the discharge of E. C. Powell and Eugene Clark Ely, respondent had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

175. By said refusal to reemploy James W. Gilmore, and the discharge of L. E. Ely, and the lock-out of Walter Winslow and Boyd D. Ely, and the discharge of Steven J. Griffin and W. R. Johnston, and the eviction of O. L. Farr, George Andrade, R. K. Martin, L. A. Spear, and H. M. Wingo, and the discharge of E. C. Powell and Eugene Clark Ely, respondent has discouraged membership in a labor organization known as Cotton Producers and Grain Mill Workers Union, Local 21798, affiliated with the A. F. of L., in violation of Section 8 (3) and Section 2 (6) and (7) of the Act.

176. There is considerable proof that officers and supervisory employees of the respondent Boswell

Company brought pressure to bear upon Mrs. Margaret Dunn to withdraw her charges against the respondent Corcoran Telephone Exchange because of her discharge, but no substantial evidence to prove that the respondent Boswell Company, as such, either directly or indirectly authorized the action taken by some of its officers and supervisory employees. Therefore, the undersigned finds that the respondent Boswell Company cannot be held to have violated Section 8 (4) of the Act.

177. By the activities above set forth the respondent Associated Farmers of Kings County, Inc., a corporation, has interfered with, restrained, and coerced the employees of the respondent Boswell Company in the exercise of the rights guaranteed in Section 7, Section 8 (1), and Section 2 (6) and (7) of the Act.

178. By the activities above set forth, the respondent Corcoran Telephone Exchange, has interfered with, restrained, and coerced its employees, and the employees of the respondent Boswell Company in the exercise of the rights guaranteed in Section 7 (a) and Section 8 (1) and Section 2 (6) and (7) of the Act.

179. Mrs. Margaret A. Dunn was discharged on March 2, 1939, by respondent Corcoran Telephone Exchange for the reason that her two daughters were seen talking to the pickets on the picket line in front of the respondent Boswell Company's property, and that by said discharge the respondent Corcoran Tele-

phone Exchange has violated Section 8 (3)²⁴ and Section 2 (6) and (7) of the National Labor Relations Act.

180. The undersigned finds that members of the respondent Associated Farmers, and officers of the respondent Boswell Company, and the respondent Corcoran Telephone Exchange brought pressure to bear upon Mrs. Margaret A. Dunn to withdraw her charges filed on March 14, 1939, with the National Labor Relations Board against the Corcoran Telephone Exchange. On March 21, 1939, Margaret A. Dunn sent a wire to the National Labor Relations Board's regional office requesting that no representative be sent to investigate her case, and on April 4, 1939, sent a letter to said Board's regional office withdrawing her charge filed against said respondent Corcoran Telephone Exchange. The undersigned further finds that from all the facts above set forth, the respondent Corcoran Telephone Exchange violated Section 8 (4) of the Act by its refusal to re-employ her after her discharge on March 2, 1939, as above noted.

181. That the activities of the respondents, J. G. Boswell Company, the Associated Farmers of Kings

²⁴ Memphis Furniture Manufacturing Company, 3 N.L.R.B. p. 26—in this case the Board held that respondent violated Section 8 (3) of the Act by discharging Mrs. Bermer, a non-union employee, because her husband, an employee of respondent, was a member of the union. The principle involved in this case is similar to the principles involved in the case under consideration.

County, Inc., a corporation, and the Corcoran Telephone Exchange, above set forth, occurring in connection with the operations of the respondents as above described, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have lead to and tend to lead to labor disputes burdening commerce and the free flow of commerce.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes that:

1. Respondent, Boswell Company, by asking its employees if they were members of Local 21798; by telling the members of Local 21798 that the plant would be shut down if the union came into the plant; by telling union members that the respondent company would not stand for a union being organized in its plant; by spying upon the members of Local 21798 who were attending a meeting at Bakersfield; by refusing to reemploy James W. Gilmore on July 1, 1938, because of his union activities; by locking out Boyd Ely and Walter Winslow from their employment by shutting down the oil mill; by discharging W. T. Johnson, Steven Griffin; by evicting through its employees and supervisory employees through means of force and violence and threats of force and violence George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, E. C. Powell, L. A. Spear and H. N. Wingo and by refusing said individuals, except Joe

Briley reemployment; by discharging and by refusing to reemploy Eugene Clark Ely or any of the above-named individuals; by permitting a meeting to be held in its plant called by its supervisory employees for the purpose of organizing an independent union; by attempting to force employees to join the independent union in order that they may work; by interfering with, coercing, aiding, and dominating the J. G. Boswell Company Employees Association of Corcoran and Tipton (the Independent Union) in its formation and administration of its affairs and thus discouraging membership in the labor organization known as the Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L.; by aiding and condoning the act of the Associated Farmers of Kings County, Inc., a corporation in driving the pickets from in front of the Boswell plant on the morning of January 30, 1939; and by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act.

2. Respondent, Boswell Company, by dominating, coercing, and interfering with the formation and administration of the labor organization known as the J. G. Boswell Company Employees Association of Corcoran and Tipton (Independent), and by

aiding said Independent as set forth in the above findings of fact has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (2), and Section 2 (6) and (7) of the National Labor Relations Act.

3. Respondent, Boswell Company, by refusing to reemploy James W. Gilmore on July 1, 1938, or any time thereafter; by the discharge of L. E. Ely, and locking out Boyd Ely and Walter Winslow from their employment by shutting down the oil mill; by discharging W. R. Johnson and Steven Griffin; by evicting from the respondent's plant and employment, through its employees and supervisory employees, by means of force and violence and threats of force and violence, George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear, and H. N. Wingo; and by discharging E. C. Powell and Eugene Clark Ely, and by refusing to reinstate said individuals except for Joe Briley, to their former positions, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (3) and Section 2 (6) and (7) of the National Labor Relations Act.

4. Respondent, Associated Farmers of Kings County, Inc., a corporation, who acted directly and indirectly in the interest of the respondent Boswell Company, with the knowledge, aid, and condonement of the respondent Boswell Company, did, by means of force and violence and threats of force and violence, drive from the vicinity of the entrance

to respondent Boswell Company's plant at Corcoran, the union pickets established there by Local 21798, and did thereby interfere with, restrain, and coerce, and is interfering with, restraining, and coercing the employees of the respondent Boswell Company in the exercise of their rights guaranteed in Section 7 of the Act, and did thereby engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act.

5. Respondent, Corcoran Telephone Exchange, by its various conversations with Mrs. Margaret A. Dunn regarding union matters, and by accepting and acting upon pressure being brought to bear upon it by officers and supervisory employees of the respondent Boswell Company, and by members of the Associated Farmers, and by its discharge of Mrs. Margaret A. Dunn, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act.

6. Respondent, Corcoran Telephone Exchange, by discharging and refusing to reemploy Mrs. Margaret A. Dunn, and acting directly and indirectly in the interest of respondent Boswell Company, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (3) and Section 2 (6) and (7) of the National Labor Relations Act.

7. Respondent, Corcoran Telephone Exchange,

by refusing to reemploy Margaret A. Dunn unless she withdrew her charges against said Exchange with the National Labor Relations Board, and acting directly and indirectly in the interest of the respondent Boswell Company, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (4) and Section 2 (6) and (7) of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. Respondent, Boswell Company, cease and desist from interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the labor organization known as Cotton Producers and Grain Mill Workers Union, Local 21798, A.F. of L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. Respondent, Boswell Company, cease and desist from:

- (a) discouraging membership in the Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L., or any other labor organization; and

- (b) dominating or interfering with the formation and administration of the J. G. Boswell Employees Association of Corcoran and Tipton, or any other labor organization, and from contributing financial or other support to the J. G. Boswell Em-

ployees Association of Corcoran and Tipton, or any other labor organization.

3. Respondent, Associated Farmers of Kings County, Inc., a corporation, cease and desist from interfering with, restraining, or coercing the employees of the Boswell Company, and members of the Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L., directly or indirectly in the interest of the respondent Boswell Company, or in any way individually or by concerted activity with the respondent Boswell Company, for the purpose of interfering with, restraining, or coercing the employees of the respondent Boswell Company, in the exercise of the right to self-organization, to form, join, or assist the Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L. or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

4. Respondent, Corcoran Telephone Exchange, cease and desist from discouraging membership in the Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L., or in any other labor organization, in its own interest, or directly or indirectly in the interest of the respondent Boswell Company.

5. Respondent, Corcoran Telephone Exchange, cease and desist from interfering with Margaret A. Dunn, or any other employee, because of the filing of charges against said respondent Corcoran Tele-

phone Exchange with the National Labor Relations Board.

6. In order to effectuate the policies of the Act, respondent Boswell Company take the following affirmative action:

(a) Withdraw all recognition from the J. G. Boswell Employees Association of Corcoran and Tipton as representative for the purpose of dealing with the respondent Boswell Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish the above-named J. G. Boswell Employees Association of Corcoran and Tipton.

(b) Offer to James W. Gilmore, Boyd Ely, Walter Winslow, W. R. Johnson, Steven Griffen, Eugene Clark Ely, George J. Andrade, O. L. Farr, R. K. Martin, H. N. Wingo, E. C. Powell, L. A. Spear, and L. E. Ely, immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(c) Make whole the said James W. Gilmore, Boyd, Ely, Walter Winslow, W. R. Johnson, Steven Griffen, Eugene Clark Ely, George J. Andrade, O. L. Farr, R. K. Martin, H. N. Wingo, E. C. Powell, L. A. Spear, and L. E. Ely, for any losses of pay they may have suffered by reason of respondent's discrimination in regard to their hire and tenure of employment, by paying to each of them a sum of money equal to that which they would have earned as wages or salary during the period from the date of such discrimination to the date of offer of reinstatement

or date of reemployment, less their net earnings,²² during such periods;

(d) Post immediately in conspicuous places in its plant and maintain for a period of at least sixty (60) consecutive days, notice to its employees stating that respondent will cease and desist in the manner aforesaid; and that respondent's employees are free to become or remain members of the Cotton Producers and Grain Mill Workers Union, Local 21978, A. F. of L., and that the respondent will not discriminate against any employee because of membership or activity in that organization.

(e) Respondent, Coreoran Telephone Exchange, offer to Mrs. Margaret A. Dunn immediate and full reinstatement to her former position without prejudice to her seniority or other rights and privileges:

(f) Make whole Mrs. Margaret A. Dunn for any loss of pay she may have suffered by reason of respondent's discrimination in regard to her hire and tenure of employment, by paying to her a sum of money equal to that which she would have earned as wages or salary during the period from the date of such discrimination to the date of offer of rein-

²² By "net earnings" is meant earnings less expenses such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for respondent which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crosset Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590* 3 N.L.R.B. 440.

statement or date of reemployment, less her net earnings during such period.

(g) Post immediately in conspicuous places in its plant and maintain for a period of at least sixty (60) consecutive days, notice to its employees stating the respondent will cease and desist in the manner aforesaid;

(h) Respondents, Boswell Company, Associated Farmers of Kings County, Inc., a corporation, and the Corcoran Telephone Exchange, separately and individually, file with the Regional Director for the Twenty-first Region, on or before twenty (20) days from the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which each of said respondents has complied with the foregoing recommendations.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents and each of them notify said Regional Director in writing that each of them will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order requiring the respondents and each of them to take the action aforesaid.

It is further recommended that the complaint be dismissed as to Elmer Eller; and Joe Briley, that the allegation in the complaint that the respondent Associated Farmers circulated a list of members of the Union be dismissed for lack of proof thereof; that the allegation alleging violation of Section 8

(4) of the National Labor Relations Act against the respondent Boswell Company, and the respondent Associated Farmers of Kings County, Inc., a corporation, be dismissed for lack of proof thereof.

Request for permission to file briefs with or present oral argument before the National Labor Relations Board upon issues raised by any exceptions to this report or on other issues upon which it is desired to file a brief or present oral argument must be made to the Board, Shoreham Building, Washington, D. C., within twenty (20) days after the date of the order transferring the same to the Board, as provided in Article II, Section 32 of the Rules and Regulations, Series 2, effective July 14, 1939.

JOHN T. LINDSAY,
Trial Examiner.

Dated: January 11, 1940.

[Title of Board and Cause.]

STATEMENT OF EXCEPTIONS

The respondents J. G. Boswell Company, a corporation, Associated Farmers of Kings County, Inc., a corporation, and Corcoran Telephone Exchange, a corporation, do, and each of them does hereby, present their exceptions to the record and Intermediate Report and proceedings in the above entitled matter under and pursuant to the provisions of Article II, Section 33 of National Labor Relations Board Rules and Regulations—Series 2.

The filing of these exceptions shall not be deemed to constitute a waiver of any rights, whether legal or equitable, of said respondents, or any or either of them, in the premises, and shall not be deemed to constitute any admission on the part of said respondents, or any or either of them, that said National Labor Relations Board has jurisdiction of the matters in controversy, or any thereof, but these exceptions are filed for the sole purpose of protecting and preserving the rights, if any, of each and all of said respondents in the premises, particularly in view of the provisions of Article II., Section 33 of the aforesaid Rules and Regulations which provides, among other things, that "No matter not included in a statement of exceptions may thereafter be objected to before the Board, and failure to file a statement of exceptions shall operate as a submission of the case to the Board on the record."

Said respondents do not, nor does either or any of them, intend, by the filing of these exceptions, to submit to the alleged jurisdiction of said Board in any particular.

For the sake of convenience and in order to conform with the procedure followed in the Intermediate Report, the National Labor Relations Act is herein referred to as the Act; the National Labor Relations Board as the Board; Cotton Products and Grain Mill Workers' Union, Local 21798, A. F. of L. as the Union; J. G. Boswell Company Employees' Association of Corcoran and Tipton as the Independent; J. G. Boswell Company, a corporation, as

Boswell Company; Associated Farmers of Kings County, Inc., a corporation, as Associated Farmers; and Corcoran Telephone Exchange, a corporation, as the Exchange.

Said respondents and each of them hereby refer to the transcript of testimony taken before the Trial Examiner at the hearing in the above case and said respondents and each of them hereby incorporate each and every part of said transcript as a part of these exceptions, the same as if included herein.

At the commencement of the hearing in this case the Trial Examiner ruled that the record would automatically show an exception on behalf of any party against whom any adverse ruling had been made, regardless of whether such party specifically requested an exception. (Tr. p. 26 lines 7 to 14, p. 28 lines 5 to 8, p. 2277 lines 8 to 12).

During the early part of said hearing, to-wit, on the first day thereof, it was specified that objections were being made on behalf of all respondents except where otherwise stated and it was requested that the record so show.

The Trial Examiner granted this request. (Tr. p. 82 lines 3 to 6).

Exception No. 2.

Respondents, and each of them, hereby except to the jurisdiction assumed by the Board over respondent Boswell Company, upon the following separate and independent grounds:

1. That there was no evidence showing, or tending to show, that said respondent now is or was

at any time engaged in interstate or foreign commerce within the meaning of the Act.

2. That there was no evidence whatever which showed or tended to show that said respondent was engaged in interstate or foreign commerce within the meaning of the Act at any time subsequent to June 30, 1938.

3. That there was no evidence which showed or tended to show that any act alleged to have been committed by said respondent, or to which it was alleged said respondent is or was a party, was in commerce, or affected commerce, or burdened or obstructed commerce or the free flow of commerce, or led, or tended to lead, to a labor dispute burdening or obstructing commerce or the free flow of commerce.

Respondents, and each of them, hereby specify the foregoing as Exception No. 2.

Exception No. 3.

Respondents, and each of them, hereby except to the jurisdiction assumed by the Board over respondent Exchange, upon the following separate and independent grounds:

1. That the evidence affirmatively established that the respondent Exchange is not and was not at any time engaged in interstate or foreign commerce, and that its operations do not and did not affect commerce within the meaning of the Act.

2. That the evidence affirmatively established that no labor dispute within the meaning of the Act existed between the Exchange and Margaret A. Dunn, or any other employee of the Exchange.

3. That the evidence affirmatively established that said Margaret A. Dunn was not a member of any labor organization within the meaning of the Act, and that she never in any manner assisted or attempted to assist any such labor organization.

Respondents, and each of them, hereby specify the foregoing as Exception No. 3.

Exception No. 4.

Respondents, and each of them, hereby except to each and every ruling against said respondents or any of them made by the Trial Examiner during the course of the hearing in this case and in the Intermediate Report herein.

Respondents, and each of them, hereby specify the foregoing as Exception No. 4.

Exception No. 5.

Respondents, and each of them, hereby except to each and all of the Findings contained in said Intermediate Report, except the portions of said Findings hereinafter designated, upon the ground that the evidence introduced and received at the hearing in this case is insufficient to support any of said findings except the following:

(a). The following portion of Finding No. 45, page 25 of the Intermediate Report:

“The undersigned finds that at the time Ely temporarily took over the job as head presser he was increased to 40 cents an hour and that when the head presser returned Ely was sent back to his former job as press helper and reduced to 35 cents per hour; that he only received the 40

cents per hour during the time he acted as head pressman for the reason that the job in question was rated at 40 cents per hour; that the reduction to 35 cents per hour was in the normal course of respondent's business and therefore Ely's reduction from 40 cents to 35 cents an hour was not because of union activities."

(b). The portion of Finding No. 89, page 44 of the Intermediate Report wherein it is found that the Complaint as to Elmer Eller should be dismissed.

(c). The portion of Finding No. 90, page 44 of the Intermediate Report wherein it is found that the Complaint as to Joe Briley should be dismissed.

(d). The portion of Finding No. 171, page 87 of the Intermediate Report wherein it is found that there is not substantial evidence to prove that the Associated Farmers of Kings County, Inc., a corporation, as such had taken any part in any action in exerting pressure to bear upon Mrs. Dunn to withdraw her charges filed against Corcoran Telephone Exchange, and wherein it is found that there is no substantial proof to show that the Associated Farmers of Kings County had authorized, either directly or indirectly, any action regarding the Dunn discharge.

(e). The portion of Finding No. 176 wherein it is found that there is no substantial evidence to prove that respondent Boswell Company as such, either directly or indirectly, authorized any action to bring pressure to bear upon Mrs. Margaret Dunn

to withdraw her charges against respondent, Corcoran Telephone Exchange, and the following portion of said Finding No. 176, to-wit:

“Therefore, the undersigned finds that the respondent Boswell Company cannot be held to have violated Section 8 (4) of the Act.”

Respondents, and each of them, hereby specify the foregoing as Exception No. 5.

Exception No. 6.

Respondents, and each of them, hereby except to each and all of the Conclusions of the Trial Examiner set forth in said Intermediate Report, upon the following grounds, to wit:

1. That each, every, and all of such Conclusions are based upon improper and unfounded Findings of fact;

2. That none of such Conclusions is supported by the Findings of Fact, or any thereof; and

3. That the evidence adduced at the hearing herein is insufficient to support all or any of the material allegations contained in the amended complaint or in the original complaint in this matter.

Respondents, and each of them, specify the foregoing as Exception No. 6.

Exception No. 7.

Respondents, and each of them, hereby except to each and all of the recommendations of the Trial Examiner contained in said Intermediate Report, with the exception of the following portion thereof, on page 96 of the Intermediate Report, to-wit:

“it is further recommended that the complaint be dismissed as to Elmer Eller; and Joe Briley, that the allegation in the complaint that the respondent Associated Farmers circulated a list of members of the Union be dismissed for lack of proof thereof; that the allegation alleging violation of Section 8 (4) of the National Labor Relations Act against the respondent Boswell Company, and the respondent Associated Farmers of Kings County, Inc., a corporation, be dismissed for lack of proof thereof.”

upon the ground that each and every one of said recommendations, with the above exception, is based upon improper and unfounded Findings of Fact and Conclusions and none of said recommendations are warranted or supported by the evidence.

Respondents, and each of them, hereby specify the foregoing as Exception No. 7.

Exception No. 8.

Before the introduction of any testimony at the hearing in this case all of the respondents objected to the introduction in evidence by Board's counsel of the charge of Margaret A. Dunn against the Exchange (Board's Exhibit No. 1 (q) the jurat of which charge bears date March 13, 1939), on the ground that said charge had never been served upon any of the respondents; that the only charge served on any of the respondents concerning the Exchange or Margaret A. Dunn was that contained in the fourth amended charge, a copy of which was served with the amended complaint issued May 6, 1939; that the

fourth amended charge was made by E. F. Prior as business representative of the Union; that there was no showing or allegation that Margaret A. Dunn was or intended to become a member of the Union, or that she had engaged in any union activities or had any connection whatsoever with any union; and that there was no authority shown or alleged for E. F. Prior to act in any respect for her in the filing of the fourth amended charge. Further objection was made on the ground of incompetency and irrelevancy (tr. 7-13, and 28-34). The Trial Examiner erroneously overruled the objections and admitted said charge of March 13, 1939 in evidence (tr. 34-35) and respondents excepted thereto. All of the respondents hereby except to such ruling as Exception No. 8.

Exception No. 9.

Respondents, and each of them, hereby except to the admission in evidence, over respondents' objection, of the fourth amended charge dated May 4, 1939, as Board's Exhibit No. 1(R), insofar as said charge concerns Margaret A. Dunn and the Exchange, upon all of the grounds specified in Exception No. 8, excepting, however, no claim is made that a copy of the fourth amended charge was not served upon the respondents.

Respondents duly interposed objections to the introduction of said exhibit on the foregoing grounds and said objections were erroneously overruled by the Trial Examiner (tr. pages 13, 14; pages 21 to 23; pages 28 to 35). Respondents duly excepted thereto.

All of said respondents hereby except to such ruling as Exception No. 9.

Exception No. 10.

Respondents, and each of them, hereby except to the admission in evidence of the amended complaint as Board's Exhibit No. 1(S), insofar as it relates to the allegations concerning Margaret A. Dunn, on the same grounds previously specified in Exceptions Nos. 8 and 9.

Respondents duly objected to the introduction of said Exhibit on the foregoing grounds, and the Trial Examiner erroneously overruled said objections and admitted the complaint in evidence in its entirety (tr. pages 14; pages 21 to 23; pages 28 to 35). Respondents duly excepted thereto.

All of the respondents hereby except to such ruling as Exception No. 10.

Exception No. 12.

Prior to the hearing of this case the respondent Boswell Company filed with the Regional Director of the Board for the Twenty-First Region a written motion to dismiss said proceeding as to said respondent and to dismiss the charges on file against said respondent. (Board Exhibit No. 1-DD). Said motion was made upon the ground that no act of said respondent or to which said respondent is a party is in commerce or affects commerce, or burdens or obstructs commerce or the free flow of commerce, or has led or tended to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce; and upon the further ground that the Board has no jurisdiction over said respondent. Thereafter before the introduction of any testimony at the hear-

ing in this case the Trial Examiner erroneously denied said motion to dismiss (tr. 28) and said respondent Boswell Company duly excepted thereto. Said respondent hereby excepts to the denial of said motion and specifies such denial as Exception No. 12.

Exception No. 14.

Prior to the hearing of this case the respondent Exchange also filed with the Regional Director of the Board for the Twenty-First Region a written motion to dismiss said proceeding as to said respondent and to dismiss the charge on file against said respondent. (Board Exhibit No. 1-CC). Said motion was made upon the same grounds as the motion made by respondent Boswell Company hereinabove mentioned. Thereafter before the introduction of any testimony at the hearing in this case the Trial Examiner erroneously denied the motion to dismiss (tr. 28) and said respondent Exchange duly excepted thereto. Said respondent hereby excepts to the denial of said motion and specifies such denial as Exception No. 14.

Exception No. 17.

Respondents, and each of them, hereby except to the ruling of the Trial Examiner, overruling the objections of said respondents to the reception of any evidence in support of the allegations contained in the fourth amended charge and the amended complaint relating to the Exchange, upon the grounds that the charge filed by Mrs. Dunn with the Board on March 14, 1939 (Board's Exhibit No. 1-Q) was not served upon any of the respondents;

that there was no connection shown between Mrs. Dunn and Mr. Prior, and no authority shown from Mrs. Dunn to Mr. Prior, to file on her behalf the fourth amended charge upon which the amended complaint was issued; and that there was no proof shown which would support the Board taking jurisdiction over the Exchange. Said objections were duly made by respondents, and each of them, prior to the introduction of any testimony in support of the Board's alleged case against the Exchange, (Tr. 1058-1060; Tr. 7-14), and the Trial Examiner erroneously overruled said objections and permitted the introduction of such testimony, to which said respondents, and each of them, duly excepted.

Said respondents, and each of them, hereby specify the foregoing ruling as Exception No. 17.

Exception No. 18.

Respondent Associated Farmers hereby excepts to the ruling of the Trial Examiner, overruling the objection of said respondent to the reception of any evidence in support of the allegations contained in the fourth amended charge and the amended complaint relating to the Exchange, upon the ground that neither the fourth amended charge nor the amended complaint contain any claim or allegation that respondent Associated Farmers acted in the interest of the Exchange or acted as an "employer" in connection with the Exchange within the meaning of the Act. Said objection was duly made by said respondent prior to the introduction of any testimony regarding the Board's alleged case

against the Exchange. (Tr. 1058-1060). The Trial Examiner erroneously overruled said objection and permitted the introduction of such testimony, to which said respondent duly excepted.

Respondent Associated Farmers hereby excepts to the reception, over the objection of said respondent, of evidence under the Fourth Amended Charge and in support of the allegations of the Amended Complaint relating to the Exchange, upon the ground that nowhere in the complaint is it alleged that said respondent Associated Farmers acted in any respect in the interests of the Exchange, or acted as an "employer" in connection with the Exchange, within the meaning of the Act. During the hearing, when Mr. C. H. Glenn was first called by the Board as a witness, respondent Associated Farmers duly interposed an objection to the reception of any such evidence on the foregoing grounds.

The Trial Examiner stated that there was no question pending at that time which touched upon any testimony, and that the "motion" might stand in the record and he would rule on it when the occasion arose. It was stipulated that the objection might run to Mr. Glenn's entire testimony. The Trial Examiner never ruled upon said objection, but permitted Board's counsel to continue with the examination of the witness. (Tr. 1984-6). Respondent Associated Farmers hereby excepts to the failure and refusal of the Trial Examiner to rule upon such objection, and to the reception of the evidence

in support of the allegations of the Complaint relating to the Corcoran Telephone Exchange after such objections had been made.

Said respondent Associated Farmers hereby specifies all of the foregoing as Exception No. 18.

Exception No. 20.

Respondents, and each of them, hereby except to the ruling of the Trial Examiner in granting the motion of Board's counsel, over the objection of Respondents, for permission to amend Paragraph 8 of the Amended Complaint, so as to include an additional alleged discrimination against James W. Gilmore, who was not theretofore mentioned in said Amended Complaint, upon the ground that the motion of counsel for the Board to amend the Amended Complaint came too late, since it was not served upon any of the respondents within any reasonable time prior to the commencement of the hearing. Said motion to amend was made by counsel for the Board upon the sixth day of the hearing, and after the said James W. Gilmore had been called as a witness by the Board, and had been sworn and placed on the witness stand, and had given some testimony. Respondents, and each of them, duly objected to said motion to amend upon the grounds hereinabove stated, and the Trial Examiner erroneously granted said motion to amend (tr. pages 843 to 847). Respondents, and each of them, duly excepted thereto. After granting this motion, the witness was withdrawn from the witness stand, his testimony was stricken and he was later recalled

and testified to alleged discriminations against him, after the Respondents had each filed answers to said amendment to the Amended Complaint. The Respondents, and each of them, hereby specify the foregoing ruling as Exception No. 20.

Exception No. 22.

Respondent Exchange hereby excepts to the ruling of the Trial Examiner denying its motion to dismiss the Amended Complaint and the charge upon which said amended complaint was based, which motion was made at the conclusion of the Board's alleged case against said Respondent Exchange, upon the following grounds:

1. That no jurisdiction of the Board over said Respondent had been established, in that the evidence failed to show that said Respondent was engaged in interstate commerce, or in any business substantially affecting interstate commerce, or in which a labor situation could affect interstate commerce, within the meaning of the Act, as construed by the courts.

2. That Mrs. Dunn herself testified that she was not a member of any labor organization and had never engaged in any union activities, and that, therefore, she was not entitled to any redress under the Act.

(tr. p. 2195). Said motion to dismiss was erroneously denied by the Trial Examiner and said Respondent duly excepted thereto (tr. p. 2197). The Respondent Exchange hereby excepts to the fore-

going ruling of the Trial Examiner and specifies the same as Exception No. 22.

Exception No. 23.

Said respondents and each of them except to the manner in which the hearing in this case was conducted by the Trial Examiner as disclosed by the record, which shows:

(a) That the hearing was not conducted in a fair and impartial manner, but on the contrary the Trial Examiner throughout the entire hearing showed marked bias and prejudice in favor of the Union and Board's counsel and case, and against respondents and their counsel and case.

(b) That throughout the entire hearing the Trial Examiner displayed animosity toward counsel for respondents and frequently and repeatedly during the course of the hearing became angry with and argued with respondents' counsel, and several times threatened to bar such counsel from further participation in the hearing, without any reason, cause or justification whatsoever for such conduct or acts on the part of the Trial Examiner.

A few examples of the conduct of the Trial Examiner, referred to in the foregoing paragraphs (a) and (b), are shown by the proceedings which appear in the following portions of the transcript: Pages 2811 to 2816; 635 and 636; 358 to 362; 376 to 379; 416 and 417; 448 and 449; 453 to 457; 926 and 927; 956 to 958; 1342 to 1344; and 2106.

(c) The Trial Examiner showed a hostile attitude toward witnesses called by respondents, and a

friendly attitude toward witnesses called by the Board. In numerous instances he cross examined and argued with witnesses called by respondents. He rarely examined the witnesses called by the Board, and when he did his examination was in the nature of a friendly and leading examination.

For example, after E. C. Powell, one of the witnesses called by the Board, had been thoroughly impeached and discredited, the Trial Examiner attempted, by leading and suggestive questions, to rehabilitate him. One of the respects in which Powell had been impeached was his admission that he had been convicted of a felony for which he had been imprisoned as one of the conditions of probation. He testified to certain details of his conviction directly contrary to the Official Reporter's transcript in the criminal proceeding in question (Boswell's Exhibit No. 21). After he was impeached by the official reporter's transcript in that proceeding, the Trial Examiner endeavored by leading questions to elicit testimony from Powell to the effect that he had been improperly and unfairly treated and convicted, and had not been advised of his legal rights, when, in fact, the official reporter's transcript in that proceeding showed conclusively that he had been properly informed of his rights and fairly and properly tried and convicted (tr. pages 662 to 667 and 681 to 685).

Another instance when the Examiner questioned one of the Board's witnesses, was during the testimony of Johnston (tr. pages 252 to 254).

Some of the examples of the numerous instances of hostile cross examination of, and argument with, witnesses called by the respondents are the following:

C. H. Glenn (tr. pages 2019 to 2022, and 2088 and 2089);

Harold E. Botts (tr. pages 2385 to 2397);

Blakely G. Crary (tr. pages 2898 and 2899);

Samuel Brenes (tr. 1975 and 1976);

James W. Woodruff (tr. pages 2913 to 2915);

J. B. Boyett (tr. pages 2782 and 2784);

Louis T. Robinson (tr. pages 2369 and 2459 to 2465);

James W. Hubbard (tr. page 1815);

George H. Cutter (tr. page 1647);

George W. Bell (tr. pages 2219 to 2221);

John A. Case (tr. pages 2257 to 2259); and

Roger R. Walch (tr. pages 208 and 209).

(d) The Trial Examiner repeatedly during the hearing made statements off the record, which properly belong therein. In several instances such statements were made over the objection of respondents. During the numerous off the record discussions which took place at the order of the Trial Examiner, he made statements which clearly revealed his bias and his animosity toward respondents, and severely criticized counsel for respondents without any cause therefor. In at least one instance, his ruling upon an objection was made during one of these off the record discussions, and such ruling does not appear in the transcript (tr. page 249,

line 2; page 250, line 18). Also during some of these off the record discussions, the Trial Examiner became angry with counsel for respondents, so that the true nature of the proceedings and the actual attitude of the Examiner is not correctly shown by the record.

(c) That the Trial Examiner in his rulings upon motions and objections to admissibility of evidence improperly and unfairly favored Board's counsel and case and consistently ruled improperly and unfairly against the respondents and their respective counsel and cases.

(f) E. F. Prior, business representative of the Union was present throughout practically the entire hearing and although he was not an attorney in the proceeding, he was permitted by the Trial Examiner to sit, and did sit, at the table of Board's counsel and from his actions and conduct it was apparent that he was aiding and assisting Board's counsel in the presentation of the Board's case against respondents. Upon numerous occasions during the hearing the Trial Examiner requested all counsel to come to his bench so he could discuss certain matters with them off the record and on such occasions said E. F. Prior, although he was a witness for the Board and was not counsel for any of the parties to the proceeding, always went forward and was permitted by the Trial Examiner to participate in such discussions at the bench.

Respondents, and each of them, hereby specify the foregoing acts and conduct of the Trial Examiner an Exception No. 23.

Exception No. 24.

Respondents, and each of them, hereby except to the bias and prejudice of the Trial Examiner as shown by the Intermediate Report, and except to the acceptance by the Trial Examiner as facts in the Intermediate Report of extravagant and incredible statements by Union and Board witnesses and his complete disregard of the cross-examination of said witnesses and the testimony of respondents' witnesses upon the same subject.

The record shows that the majority of the findings contained in the Intermediate Report of the Trial Examiner are taken in their entirety from the direct examination of Union and Board witnesses regardless of their credibility. The Trial Examiner has displayed his bias by the fact that he has disregarded or ignored all of the testimony adduced by respondents and by the fact that all intendments and inferences have been construed by him against respondents and in favor of the Union. The foregoing clearly indicates the Trial Examiner's determination to support the Union charges regardless of their factual soundness in proof.

Respondents, and each of them, specify the foregoing as Exception No. 24.

Exception No. 25.

Respondents, and each of them, hereby except to the statements set forth on pages 1 to 8, inclusive, of the Intermediate Report, upon the ground that such statements are incorrect, incomplete, and misleading in the following respects and particulars, to-wit:

1. It is stated in lines 1 and 2, page 1, that
“On November 21, 1938, the California State
Council of Soap and Edible Oil Workers, A.
F. of L., filed charges . . . ”

Said statement is an incorrect statement of the record. The record shows that said charges hereinabove referred to (Board's Exhibit 1-B) were never served upon any of the respondents, and were filed by E. F. Prior on behalf of Cotton Products and Grain Mill Workers Union, Local 21798, A. F. of L. (Tr. p. 4). The undisputed evidence also shows that said California State Council of Soap and Edible Oil Workers has never obtained a charter from the American Federation of Labor, and is in no way connected with the American Federation of Labor. (Tr. p. 392, p. 513).

2. It is stated in paragraph 2, page 2, of the Intermediate Report that

“The amended complaint, which will hereinafter be more fully discussed, the charges and notice of hearing herein were duly served upon the respondents, the Union, and the J. G. Boswell Employees Association of Corcoran and Tipton”

Said statement is an incorrect statement of fact and is misleading. The evidence shows that neither said original charge filed November 21, 1938, nor said amended charge, nor said second amended charge, nor the charge filed by Margaret A. Dunn, was served at any time upon these respondents, or any of them.

3. It is stated on page 3 of the Intermediate Report that the amended complaint alleged, among other things,

“that on or about January 20, 1939, respondent discharged Eugene Clark Ely”

This is an incorrect statement of the allegation contained in said amended complaint. Said amended complaint (Paragraph 8) alleged that on or about January 30, 1939, respondent Boswell Company discharged Eugene Clark Ely.

4. The Trial Examiner entirely omitted any reference to the allegation contained in Paragraph 20 of the amended complaint that

“on or about January 20, 1939, the Union instituted a boycott of Respondent's (Boswell Company) products, and stationed pickets at Respondent's Corcoran plant, and said activities are being carried on at the present time.”

5. The portion of said statement purporting to summarize the answer to the amended complaint herein on behalf of Respondent Associated Farmers (page 5, paragraph two of said Intermediate Report) is an erroneous summary of the contents of the said answer. In its answer the said Respondent admitted and alleged its corporate organization, admitted the corporate organization of Respondent Boswell Company and that Respondent Boswell Company was engaged in the general type of business set forth in paragraph 1 of the Amended Complaint, it denied specifically the allegation re-

lating to alleged unfair labor practices by said respondent, and it denied, for lack of knowledge thereof, all of the allegations in said amended complaint relating solely to respondent Boswell Company and Respondent Exchange.

6. It is stated in line 2, page 6 of the Intermediate Report that the hearing was conducted from May 17 to June 16, 1939. This is an incorrect statement of fact. The record shows that the hearing commenced May 18, 1939 and was concluded June 16, 1939.

7. The Trial Examiner, in the last paragraph on page 6 of the Intermediate Report, purports to quote paragraph 8 of the Amended Complaint as amended during the course of the hearing. However, as shown by the record, this quotation is not in accordance with the record. For instance, the date of Gilmore's alleged discharge as stated in the Intermediate Report is stated as on or about March 30th, whereas the record shows it was on or about March 20, 1938.

It is also stated in the first paragraph on page 7 of the Intermediate Report, that

“the Respondents waived the right of the five (5) days as to W. R. Johnson, Steven J. Griffen, Elmer Eller, and amended their answers to meet the new charges”.

This is an incorrect statement of the record. The record shows that none of the Respondents waived any such right (Tr. pp. 843 and p. 851), and that

they, and each of them, duly served and filed written answers to the amendment to paragraph 8 of the Amended Complaint (Board Exhibits Nos. 1 (KK), and 1 (MM); Tr. pp. 1251 to 1254.)

8. It is stated in lines 4 to 6, page 7 of the Intermediate Report, that

“During the hearing counsel for the Exchange; first moved to strike testimony from the record on page 2283, line 8 to page 2286 line 6 of the transcript of June 10, 1939”.

Said statement is an incorrect statement of the record. The record shows that the motion to strike such testimony was made on behalf of all respondents (Tr. p. 2917) and was not limited to respondent Exchange.

Respondents, and each of them, specify all of the foregoing as Exception No. 25.

Exception No. 28.

Said Respondents, and each of them, hereby except to the whole of Finding No. 6, pages 9 and 10 of the Intermediate Report, except the statement therein contained that Respondent Boswell Company owns and controls and operates J. G. Boswell Farm Loan Company, and that the said Loan Company finances various farmers in that community during the growing season, upon the ground that the portions of said Finding to which exception is taken as aforesaid are not supported by any testimony or evidence, and are contrary to the testimony and evidence adduced at the hearing. No

evidence was introduced relating to respondent Boswell's general practice and method of financing farmers.

The only evidence in the record respecting either the financing of farming operations or the conduct of farming operations by the Respondent Boswell Company, or its financing agency known as the J. G. Boswell Farm Loan Company, consisted of testimony regarding isolated instances, which testimony was given by the following witnesses, to wit:

Louis T. Robinson, who testified that, subject to approval by the head office, loans are made to farmers in the vicinity of Corcoran through J. G. Boswell Farm Loan Company. He testified that they financed Mr. Salyer on a large acreage of grain and a rather large acreage of cotton, and at the time of the hearing had loaned him about \$8.00 on his grain and had agreed to loan him around \$20.00 an acre on his cotton, and that the necessary funds to produce his crop are loaned as the work of producing the crop progresses (tr. 2452-5).

E. C. Salyer, who testified he had had financial dealings with respondent Boswell Company and that he sells some of the products of his farm to them—most of the cotton; also that he was indebted to them in some amount (tr. 1572-5).

The only evidence relating to the method of financing was the testimony of C. H. Glenn who, over the objection of respondents, testified regarding the manner in which his particular finances are handled. He testified that before he begins crop-

ping he makes his budgets for grain and cotton and submits those to respondent Boswell Company and makes arrangements with them to finance the crops according to those budgets; that he draws the money as he needs it, that it is partially paid to him, that part of the bills are approved by him and are then sent to the Company who pays them, and that the Boswell Company issues checks to Glenn to pay his payroll and he distributes the money (Tr. pgs. 2003 to 2008). This testimony regarding the manner of handling Glenn's financing was erroneously introduced over the objections of respondents (Tr. p. 2006, l. 14 to l. 20, p. 2007, l. 14 to l. 25), upon the grounds that said evidence was incompetent, irrelevant and immaterial. Said respondents, and each of them, duly excepted to the overruling of said objections and the introduction of such testimony into the record and do hereby except thereto. The record shows that all of the foregoing testimony by Glenn related to his particular financing problems and in no way dealt with the practice and custom of respondent Boswell Company.

J. B. Boyett who testified that he never dealt with the Boswell Company directly; that he was financed from time to time by San Joaquin Cotton Company, a competitor of the Boswell Company (Tr. p. 1468); that he was a stockholder in a small farming corporation which ginned its cotton at the Boswell gin, but that he did not know whether it sold any cotton to the Boswell Company during the last three years and he paid very little attention to it. He

testified that he didn't know whether the said corporation was financed by the Boswell Company but it had been sometimes in the past (Tr. pgs. 1469 and 1470).

Walter Grisham, who testified that he farms one of Mr. J. G. Boswell's farms by contract under which Mr. Boswell owns the crop (tr. 1801-2).

James W. Hubbard, who testified he works for respondent Boswell Company and looks after the Company's farms (tr. 1806); that he furnishes advice as to how to operate these farms with respect to the performance of the normal farming operations and advises the foremen therein how to operate the farms; that in the early part of 1939 the Company had one contractor and two foremen on its ranches (tr. 1814-16).

The only evidence respecting irrigation was the testimony of John Arthur Case, who testified he is a civil engineer employed by Boswell Company (tr. 2242); that he prepares and takes measurements of water delivered to the Company from the Peoples Canal and Melga Canal and also prepares estimates and supervises installation of pumps and other engineering data that is required (tr. 2246).

There was no testimony or evidence whatever to support the statement in said Finding that the financed crop, when harvested, is delivered to the Boswell Company at a designated price, or at any price, or that the Boswell Company controls, operates, or manages a number of farm ranches upon which are placed foremen who direct the operation

of the ranch for the Company. The evidence shows, as above mentioned, that in 1939, the Boswell Company operated only three ranches, all of which were either owned or held by it under lease, and that of these three ranches two thereof were operated through foremen, and the third ranch was operated by a contractor.

There was absolutely no evidence whatever to support the statement in said Finding that Boswell Company controls the water supply and charges the farmer \$8.00 or any amount for each irrigation or watering, or that it sells or furnishes water to anyone, or provides any water for any farm or farms except those operated by it.

Contrary to the statement in said Finding, no evidence was introduced regarding the payment by the Boswell Company of the employees of any farmer. The only evidence on this matter was the testimony of Mr. Glenn, who testified that in the financing of his operations he receives the money from the Company and pays his employees.

Respondents, and each of them, specify all of the foregoing as Exception No. 28.

Exception No. 30.

Respondents, and each of them, hereby except to all of Finding No. 8, page 11 of the Intermediate Report, except the Finding as to the corporate existence of said Respondent Exchange and that C. H. Glenn is now its duly elected president and principal stockholder, upon the ground that all of said Finding, excepting the aforementioned portions

thereof which are not herein excepted to, are unsupported by, and are contrary to, the evidence, and upon the further ground that the evidence with respect to the portions hereby excepted to is not fully or accurately stated.

The evidence affirmatively shows that the Exchange is a purely local concern; that its business and operations are limited to the City of Corcoran, California, (tr. pp. 1987 and 2009); that it has only about 300 subscribers (tr. p. 2019); that it has what is known as an independent telephone connection agreement with the Pacific Telephone and Telegraph Company, whereby the Exchange receives 30% of tolls on outgoing calls and the Pacific Telephone and Telegraph Company receives the remaining 70%, and the Exchange does not receive anything on incoming calls (tr. 1998) unless they happen to be collect calls; that the only connection between the Exchange and Pacific Telephone and Telegraph Company, aside from the aforementioned independent telephone connection agreement is certain cables owned, installed, and maintained by Pacific Telephone and Telegraph Company, which cables come in through the rear of the building in which the office of the Exchange is located to the back of the switchboard and the wires in which cables are attached to the back of the switchboard by solder. That these cables are owned entirely by Pacific Telephone and Telegraph Company and the Exchange has nothing whatever to do with the maintenance and repair thereof (tr. 2798-9). This

is the only means by which the Exchange places long distance calls with Pacific Telephone and Telegraph Company through the Hanford office of the last named company. The evidence clearly established that the Exchange is a purely local, independent concern, and that it is not in anywise an integral part, or any part, of the Pacific Telephone and Telegraph Company. There is absolutely no evidence to support the statement contained in said Finding that the Exchange maintains the only telephone service in Corcoran, and that without its connection with the Pacific Telephone and Telegraph Company long distance service to and from that community would be shut off.

The undisputed evidence shows on the contrary:

1. The Pacific Telephone and Telegraph Company maintains a cable containing six or seven wires into the City of Corcoran from points outside of the City;

2. Respondent Exchange neither owns nor maintains any cable or telephone facilities outside of the City limits of Corcoran;

3. The Pacific Telephone and Telegraph Company is a separate and independent company having no relation with Respondent Exchange.

The respondents at the time of the hearing objected to the introduction in evidence of the annual report of the Pacific Telephone and Telegraph Company, and the annual report of American Telephone and Telegraph Company (Board's Exhibit

No. 20 (a) and (b),) upon the ground that each of said exhibits was incompetent, irrelevant, and immaterial, and hearsay as to all respondents, and upon the further ground that there had been no showing whatsoever concerning the Board's jurisdiction over the respondent Exchange, or that said respondent acted in the interests of anyone who is subject to the Board's jurisdiction, or is an employer within the meaning of the Act, and upon the further ground that there was no connection shown between the Exchange and either of the companies mentioned in said Exhibits, to wit, the American Telephone and Telegraph Company or the Pacific Telephone and Telegraph Company. The Trial Examiner erroneously overruled the objections and admitted said Exhibits in evidence, and an exception was taken thereto. (tr. 1992). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of their objections.

Respondents, and each of them, hereby except to all of the foregoing and specify the same as Exception No. 30.

No. 31.

Respondents, and each of them, hereby except to Finding No. 9, page 12 of the Intermediate Report, on the ground that said Finding is not supported by the evidence and does not fully or properly state the evidence with respect to the matters therein mentioned. The undisputed evidence shows that all equipment, cables, wire, poles and other mate-

rial purchased by the Exchange is ordered and purchased from dealers within the State of California (tr. pp. 2018-20), and that the Exchange neither ordered nor purchased any equipment or material outside the State of California. Respondents, and each of them, specify the foregoing as Exception No. 31.

Exception No. 32.

Respondents and each of them hereby except to Finding No. 10, page 12 of the Intermediate Report, on the ground certain of the statements therein contained and hereinafter referred to are either not supported by or are contrary to the evidence, or do not fully state the evidence on the matters therein mentioned.

It is stated in said finding that of the sum of \$5,248.48 received by the Exchange for out-of-town calls, long distance calls outside of the state amounted to \$177.13. This is contrary to the evidence as the undisputed evidence showed that said sum of \$177.13 was the total amount of tolls for long distance calls outside the state during the one year period and that of this sum the Exchange, under the terms of its independent agreement with the Pacific Telephone and Telegraph Company actually received only 30% of said amount (tr. 2013).

It is also stated in said finding that during the one year period in question the total number of calls which went through the Exchange was 35,588. The evidence shows that this was merely the total number of toll calls and did not include any of the

innumerable local calls, no record as to the number of which was kept. (tr. 2015).

It is also stated in said finding that without the connection of the Exchange with the Pacific Telephone and Telegraph Company long distance calls from Corcoran would be impossible. This statement is not supported by any evidence whatever.

It is also stated in said finding that some of the larger subscribers to the Exchange are the J. G. Boswell Company, the Atchison, Topeka & Santa Fe Railroad and the Western Union Company. Such statement is misleading and is not supported by the evidence, except as to J. G. Boswell Company. The evidence showed that the Exchange does not have any agreements or any working agreements with the Western Union Company and does not serve said Company in any way at all; that if a person desired to send a telegram and phoned it into the office of the Exchange, they would not take it but it would be taken at the Santa Fe; that no telegraph messages are relayed by the Exchange over its system, (tr. 1999-2001). The Western Union Company and the Atchison, Topeka & Santa Fe Railroad each subscribes to the Exchange, but there was no showing whatever in the evidence concerning the volume of business received by the Exchange from these two subscribers or that they or either of them were large subscribers.

When Mr. C. H. Glenn was called by the Board as a witness, he was asked if the Western Union Company is a subscriber to the Telephone Ex-

change, and answered that it was, and he was also asked if the Atchison, Topeka & Santa Fe Railroad was a subscriber, and stated it was. The respondents moved to strike both of these answers, upon the ground they were incompetent, irrelevant and immaterial, upon the theory that it makes no difference who the subscribers are so far as establishing whether or not the respondent Exchange is engaged in interstate commerce. This motion to strike was denied by the Trial Examiner, and an exception taken thereto (tr. 2002-3). The respondents, and each of them, hereby except to the denial of such motion upon the grounds above stated which were urged in support of such motion.

The respondents, and each of them, specify all of the foregoing as Exception No. 32.

Exception No. 33.

Respondents, and each of them, hereby except to the following portion of Finding No. 11, pages 12 and 13 of the Intermediate Report, to-wit:

“Cotton Producers and Grain Mill Workers’ Union * * * admits to membership, employees of other companies doing like and similar work * * *”

upon the ground that said portion of said Finding is not supported by any evidence. E. F. Prior, the union organizer, was specifically questioned regarding the jurisdiction of certain local unions organized by him so far as admissibility or eligibility to membership is concerned, but counsel for the Board interposed an objection to said question, which was

erroneously sustained by the Trial Examiner (Tr. pgs. 393, 394), and respondents and each of them duly excepted thereto. On numerous occasions at the hearing counsel for the Board objected to all questions regarding the names of members of the union and regarding persons eligible for membership thereon. On each of said occasions the Trial Examiner erroneously sustained said objections and respondents and each of them duly excepted thereto.

Respondents, and each of them, hereby except to all of the foregoing rulings and hereby specify all of the foregoing as Exception No. 33.

Exception No. 34.

Respondents, and each of them, except to the following portion of Finding No. 12, page 13 of the Intermediate Report, to wit:

“The operations of respondent Boswell are
* * * dependent wholly on the volume of cotton
produced by the farmers who are its customers”

upon the ground that said portion of said Finding is unsupported by and is contrary to the evidence. The evidence shows that respondent Boswell Company is engaged in farming operations and the growing of cotton and other farm produce and also operates a cattle feeding business (Tr. pgs. 39, 40, 1814).

Respondents, and each of them, hereby specify the foregoing as Exception No. 34.

Exception No. 35.

Respondents, and each of them, hereby except to the portion of Finding No. 13, page 13, wherein it

describes the 1937-1938 season as a "heavy" season, upon the ground that said portion of said Finding is unsupported by the evidence and is misleading. There was no evidence that the 1937-1938 season was any heavier than any normal season. On the contrary, the evidence showed that the 1938-1939 season, which includes the period of time here in question, was a very short season and much below normal because of the flood and the government crop control program (Tr. p. 2403, 2404, p. 2400, pgs. 940, 941).

Respondents, and each of them, hereby specify the foregoing as Exception No. 35.

Exception No. 36.

Respondents, and each of them, except to Finding No. 14, page 13, of the Intermediate Report, upon the ground that said Finding is an inaccurate and incomplete statement of the evidence relating to the operation of gins during the 1938-1939 season. The evidence shows that there are six gins at the Boswell plant at Corcoran. They are numbered from 1 to 6 (Tr. pgs. 2533, 2534). Only four of the gins were operated during said season. They were operated only during one shift and were not operated continuously. Stipulations made by counsel for the Board and uncontradicted evidence shows that the gins operated as follows during said season:

No. 1 gin started September 30, 1938 and closed December 5, 1938. Thereafter it ran part time until December 30, 1938. About one-

half of the days during the period from December 5, 1938 to December 30, 1938 said gin was not operating at all and some times during said period it operated only two or three hours or half a day (Tr. pgs. 2546, 2547)

No. 2 gin started on October 3, 1938 and closed December 3, 1938 and did not operate thereafter (Tr. pgs. 2547, 2548).

No. 3 gin started October 1, 1938 and closed January 24, 1939 but did not operate continuously during that time. Some days in January it didn't operate at all and some days during that month it ran only part-time because there was no cotton brought in (Tr. pgs. 2548, 2549).

No. 4 gin started October 3, 1938 and closed November 25, 1938 and did not operate thereafter. During this period there were some Sundays when this gin did not operate at all and also some days when it didn't operate twelve hours because of the lack of cotton (Tr. p. 2549).

Respondents, and each of them, hereby specify the foregoing as Exception No. 36.

Exception No. 37.

Respondents, and each of them, hereby except to the omission from said Intermediate Report of Findings based upon the following uncontradicted and relevant evidence:

During the 1937-1938 season all six gins at the Boswell Company operated steadily twenty-

four hours a day with two twelve-hour shifts (Tr. p. 2534). Some of the gins started on September 20, 1937, and less than a week later all six gins were operating (Tr. p. 2534). All six gins operated until around the middle of December, 1937, at which time two of the gins were closed (Tr. pgs. 2534, 2535). The remaining four gins operated until around the middle of January, 1938, at which time two of said gins were closed (Tr. p. 2535). Thereafter for two or three weeks two gins were operated, at the end of which time one gin was closed (Tr. pg. 2535). The remaining gin operated until the end of the season in the latter part of February (Tr. pgs. 2536, 2537) which was the end of the 1937-1938 ginning season.

Respondents, and each of them, hereby specify the foregoing omission as Exception No. 37.

Exception No. 38.

Respondents, and each of them, hereby except to the omission from said Intermediate Report of Findings based upon the following relevant evidence, the correctness of which was stipulated to by counsel for the Board.

During the 1937-1938 season the total number of bales of cotton ginned at Corcoran was 47,250 (Tr. p. 2544). During the 1938-1939 season the total number of bales ginned at Corcoran was 9,944 (Tr. p. 2544).

The number of bales of cotton ginned on the one day of November 17, 1937 was 468 (Tr. pgs. 2549, 2550).

The number of bales of cotton ginned on the one day November 17, 1938 was 167 (Tr. p. 2550).

The total number of bales of cotton ginned during the 1937-1938 season, to and including November 17, 1937, was 25,558 (Tr. p. 2550).

The total number of bales ginned during the 1938-1939 season, to and including November 17, 1938, was 6,785 (Tr. p. 2550).

Respondents, and each of them, hereby specify the foregoing omission as Exception No. 38.

Exception No. 39.

Respondents, and each of them, hereby except to Finding No. 15, page 13 of the Intermediate Report, upon the ground that said Finding is an inaccurate and incomplete statement of the evidence relating to the operation of the oil mill.

The following facts were established by uncontradicted evidence or stipulation by counsel for the Board:

There is no set program for the operation of the oil mill. It is operated according to the amount of cotton seed which the Company has on hand and the market conditions (tr. 2492). Occasionally, however, some of the seed in storage heats up and it is necessary to mill this "hot seed" in order to keep it from spoiling (tr. 2493). One of the main purposes of

maintaining the cattle feed yard at Corcoran is to provide an outlet for cotton seed cake, which is a by-product of the cotton seed, and sometimes, when out of feed for cattle, the mill is operated a day or so to furnish feed for them (tr. 2494).

The following operations of the oil mill was to crush seeds from cotton ginned during the 1938-1939 ginning season (Tr. pgs. 2551, 2552):

The oil mill started October 24, 1938 on the crushing of the 1938 seed and closed November 15, 1938. It reopened January 5, 1939, and closed again January 12, 1939. It reopened February 22, 1939, for the purpose of milling some hot seed, and closed again February 24, 1939 (tr. 2551-2). It reopened April 29, 1939, for the purpose of producing cotton seed cake to feed the cattle at the plant, because the Company was short of feed, and ran until May 2, 1939, when it was again closed (tr. 2551-3). The mill was also operated two days in the early part of June 1939, to provide cattle feed for the cattle at the plant (tr. 2552-3).

Respondents, and each of them, also hereby except to the omission from said finding of the following relevant evidence, the correctness of which was stipulated to by counsel for the Board:

The following operations of the oil mill were to crush seeds from cotton ginned during the 1937-1938 season. (Tr. p. 2551).

The mill started operating on September 20, 1937 and closed March 7, 1938. It reopened May 3, 1938 and closed May 17, 1938. It reopened

again July 1, 1938 and closed September 27, 1938 (Tr. p. 2550, p. 2551), at which time the crushing of the seed derived from the 1937-1938 ginning season was completed.

Respondents, and each of them, specify all of the foregoing omission as Exception No. 39.

Exception No. 40.

Respondents, and each of them, hereby except to the omission from said Intermediate Report of Findings based upon the following relevant and material facts, the correctness of which was established by uncontradicted evidence, or stipulated by counsel for the Board:

The total amount of seeds crushed in the oil mill at Corcoran from the 1937-1938 ginning season was 23,716 tons (Tr. p. 2544).

The total amount of seeds crushed in the oil mill at Corcoran from the 1938-1939 ginning season was 23,716 tons (Tr. p. 2544).

In order to obtain cotton planting seed, it is the practice of the Company to plant a special seed on a certain acreage each year, and the seed derived from the cotton grown on this particular acreage is then sacked and stored separately from the regular seed which goes to the mill for crushing, and the planting seed so set aside is used for the planting of the cotton crop during the following season (tr. 2554-5). In 1937, the Company set aside a total of 1537 tons of seed to be used for 1938 planting. However, due to the reduction in cotton acreage caused

by floods and the Government crop control program, a total of only 1007 tons of planting seed was laid aside in 1938 for 1939 planting. On November 17, 1938, 879.4 tons of this planting seed had been sacked, hauled, and stored (tr. 2553). In addition there were on hand about fifty or sixty tons which had already been sacked, but had not been weighed or stored (tr. 2556).

On November 17, 1938, the picking of cotton set aside for planting seed was completed (Tr. p. 2555), and on that date practically all of the planting seed which was laid aside for the next season had been sacked and hauled (Tr. p. 2633).

Respondents, and each of them, hereby specify the foregoing omission as Exception No. 40.

Exception No. 41.

Respondents, and each of them, hereby except to Finding No. 17, page 14 of the Intermediate Report, on the ground that said Finding is contrary to and unsupported by the evidence in the respects hereinafter specified.

The evidence showed that the peak of employment each year is between October 15, and November 15, and that the peak of employment in the 1937-1938 season was at some time during the week ending October 28, 1937, at which time 189 employees, exclusive of office help, were on the payroll. The evidence showed that at some time during the week ending November 18, 1937, there were 183 employees, exclusive of office help, on the payroll, but, contrary to the statement in said Finding, the peak of em-

ployment did not occur on November 18, 1937, or at any time during the week ending on that date (Tr. p. 2542, p. 2543). The evidence also showed that the peak of employment in the 1938-1939 season was at some time during the week ending October 27, 1938, at which time 86 employees, exclusive of office help, were on the payroll. The evidence also showed that at some time during the week ending November 17, 1938, there were 84 employees, exclusive of office help, on the payroll, but, contrary to the statement in said Finding, the peak of employment did not occur on November 17, 1938, or during the week ending on that date (Tr. pgs. 2542, 2543).

Respondents, and each of them, hereby specify the foregoing as Exception No. 41.

Exception No. 42.

Respondents, and each of them, hereby except to Finding No. 18, page 14 of the Intermediate Report, on the ground that said Finding is contrary to and unsupported by the evidence in the respects herein-after mentioned.

There was no evidence introduced to support the statement in said Finding that the employees, or any of them, were "regular" employees or that they, or any of them, "were still regarded as Boswell employees" after being laid off, and there was no evidence that "when an operation was about to start up, the men usually employed on the job involved were informed by various methods, including personal calls by Gordon Hammond or his messengers and told to report." On the contrary, the evidence

showed that in most cases the men kept in touch with Gordon Hammond and applied to him for work, but if there was no work available at the time such application was made, then he sometimes informed them when he anticipated work would be available and, as a matter of accommodation to the applicant, would agree to thereafter notify them when work was available.

In illustration of the above, the following are some of the instances shown by the record where the complaining witnesses applied to Gordon Hammond for reemployment after a lay off:

H. N. Wingo testified that he applied to Gordon Hammond for work in the gin in October 1938 (Tr. p. 1016).

L. E. Ely testified that he applied to Gordon Hammond when he was reemployed in October, 1938 (Tr. p. 1249).

W. R. Johnston testified that he applied to Gordon Hammond for work October 10, 1938 (Tr. p. 240).

O. L. Farr testified that he saw Gordon Hammond about reemployment in the fall of 1937 (Tr. p. 313).

George J. Andrade testified that upon at least two occasions he applied for work after a previous lay off (Tr. pp. 1121 and 1124).

The evidence further showed that it was not the custom or practice to hold positions open for former employees who had previously been laid off for lack of work, but, on the contrary, the applicant who qualified to perform the work when work was avail-

able was employed at the time of making application. There were a few instances, however, when Gordon Hammond got in touch with former employees, either personally or through messenger, and offered work to them.

The evidence also showed that when employees were laid off because of the lack of further work it was the custom and practice for the employees so laid off to seek and, if possible, obtain other employment, and there was no understanding or agreement of any sort that any employee so laid off should remain unemployed and wait until the company later had employment available for him. Neither was there any understanding or agreement of any kind that after an employee was so laid off that the company should have first, or any, call on his future services. It is clear from the evidence that whenever an employee was laid off his employment absolutely terminated, and there was no obligation, either on the part of the company to later re-employ him, or on the part of such former employee to subsequently accept employment by the company.

The above is illustrated by the following which are a few examples from the record:

James W. Gilmore left his employment with the Boswell Company in July of 1930 and didn't return until September, 1931. During that time he worked for other employers, including work at San Jose in a cold storage plant, work in fish canneries in Monterey and work upon the highway, (Tr. p. 1255, 1274).

R. K. Martin testified that he quit working for the Boswell Company on April 1, 1931, at which time he went back to Georgia and he did not return to work for the company until August 4, 1934 (Tr. p. 516). In September, 1937, Martin quit working for the Boswell Company and went to work for another employer. He didn't return to work at the Boswell plant until March, 1938 (Tr. p. 520, p. 546, p. 579). After the mill closed down in the summer and Martin was laid off he asked Gordon Hammond to notify him when the superintendent of the oil mill with another firm in Kingsbury wanted him to work (Tr. pgs. 549, 549, corrected by stipulation dated July 6, 1939).

L. A. Spear in the spring of 1933 was laid off and he didn't return to work for the Boswell plant for eighteen months (Tr. p. 854).

Steve J. Griffin ceased work for the Boswell Company in May, 1936, at which time he bought a hay baler and didn't return to the employ of the company for three seasons (Tr. p. 1287).

Boyd Ely quit working for the Boswell Company in the latter part of May, 1937, and took a job in the grain harvest for 60 or 70 days, after which he applied to Gordon Hammond for work again and was put to work in September, 1937 (Tr. pgs. 1156, 1157, 1174 and 1175). He testified that he left the employ of the company in May, 1938, that he worked in the harvest that year and that he returned about July, 1938 (Tr. pgs. 1174, 1158).

H. N. Wingo was laid off in April, 1938, after which he secured a job with Tulare Land Company and worked for that company from April until June 9, 1938 (Tr. pgs. 993, 994).

Farr quit working for the company in July, 1937, and went to work for the San Joaquin Cotton Company in Bakersfield where he worked four months. He returned and again secured work at the Boswell Company on November 15, 1937 (Tr. p. 262).

All of the above are examples of men complaining in this case and illustrate the fact that Boswell Company employees did not consider themselves and were not considered by the company as employees when they were not performing work for the company.

The seasonal nature of the business of the Boswell Company and the great fluctuation in employment demonstrates the fact that the above mentioned portions of said Finding are without support. The decrease from a peak employment of 189 in the 1937-1938 season to a peak employment of 86 in the 1938-1939 season made it impossible for the Boswell Company to re-employ all former employees during the 1938-1939 season.

The following portion of said Finding, to-wit:

“In any event there is no evidence that any of the seasonal lay-offs were regarded as terminations of employment”

is unsupported by and contrary to the evidence, as above pointed out.

Respondents, and each of them, hereby specify the foregoing as Exception No. 42.

Exception No. 43.

Respondents, and each of them, hereby except to Finding No. 19, page 14 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence in the respects hereinafter mentioned.

The statement in said Finding that Gilmore was laid off "on or about March 30, 1938" is contrary to the evidence. The evidence shows he was in fact laid off on March 19, 1938. (Tr. p. 1267).

Respondents, and each of them, hereby specify the foregoing as Exception No. 43.

Exception No. 44.

Respondents, and each of them, hereby except to Finding No. 20, pages 14 and 15 of the Intermediate Report, upon the ground that it is contrary to and unsupported by the evidence and incomplete in the respects hereinafter mentioned.

The portion of said Finding referring to Prior as "secretary-treasurer of the California State Council of Edible Oil Workers, affiliated with the A. F. of L." is contrary to the evidence. The Finding relates to occurrences on March 15, 1938. The evidence shows that the California State Council of Edible Oil Workers was not organized until July 1, 1938, and that Prior did not become secretary of said organization until July 1, 1938 (Tr. p. 391). Furthermore, the evidence shows that the California State Council of Edible Oil Workers does not and never

did hold a charter from the A. F. of L. and is not in any way affiliated therewith but operates merely under the authority of several affiliated local unions, for each of which Prior acts as business representative (Tr. pgs. 392 to 394).

The evidence also shows that Prior met O. L. Farr at the instigation of Farr's brother, who was president of one of Prior's local unions in Bakersfield (Tr. pgs. 396, 397, 336).

The following portion of said Finding, to-wit:

"O. L. Farr * * * told E. F. Prior * * * that in his opinion the employees of the Boswell Company were interested in organizing a union. Farr gave the names of the officials of the respondent to Prior."

is based solely upon hearsay and incompetent testimony which was erroneously admitted over the objection of respondents. Respondents duly interposed an objection to the question calling for said testimony, upon the ground that it was hearsay and not binding upon any of the respondents. The Trial Examiner erroneously overruled respondents' objection and respondents excepted thereto. (Tr. p. 70, l. 20 to p. 71, l. 4; p. 71, l. 17 to l. 19). Furthermore, the evidence shows that O. L. Farr denied that Prior and he discussed the organization of a union at the Boswell plant during the conversation referred to in said Finding (Tr. p. 336).

Respondents, and each of them, hereby specify the foregoing as Exception No. 44.

Exception No. 45.

Respondents, and each of them, hereby except to the following portion of Finding No. 21, page 15 of the Intermediate Report, to-wit:

“About a week or two following Prior’s visit to the plant, the oil mill of respondent ceased operations”

on the ground that said portion of said Finding is contrary to and not supported by the evidence. Prior testified that about a week or two after his visit he was informed that the oil mill had ceased operations (Tr. p. 72), but the uncontradicted evidence and stipulation by counsel for the Board shows that the oil mill of respondent, Boswell Company, closed on March 7, 1938, which was before Prior’s alleged visit, and that it was reopened on May 3, 1938. (Tr. pgs. 2550, 2551).

Respondents, and each of them, hereby specify the foregoing as Exception No. 45.

Exception No. 46.

Respondents, and each of them, hereby except to Finding No. 22, pages 15 and 16 of the Intermediate Report, upon the ground that certain portions thereof, which are hereinafter designated, are contrary to and unsupported by the evidence and are based solely upon hearsay and incompetent evidence erroneously introduced over the objection of respondents, and upon the ground that the Finding incorrectly states the testimony.

The portion of said Finding referring to the list of 30 names as employees “who were interested in

union affairs" is contrary to and unsupported by the evidence. There was no evidence that any of the persons named on the list referred to were interested in organizing a union at the Boswell plant, or in union affairs. The evidence shows that Farr was the only person in Corcoran with whom Prior had talked before that time (Tr. p. 404). Farr testified that the list was prepared by Gilmore and was given by Gilmore to Farr and that Farr gave the list to Prior at Gilmore's request (Tr. pgs. 333, 299, 300). The evidence shows that the list merely contained names of persons whom Prior and possibly Gilmore thought and hoped would be interested in a union.

The portions of said Finding relating to conversations were based solely upon hearsay and incompetent testimony which was erroneously introduced over the objection of respondents. No evidence was introduced showing or tending to show that respondents, or any of them, conferred any authority upon any of the persons mentioned in said Finding to speak or act on behalf of any of the respondents or that any of such persons had any authority. Respondents duly interposed objections to the questions calling for each of said alleged conversations, and the Trial Examiner erroneously overruled each of said objections to each of which respondents duly excepted (Tr. p. 70, l. 20, p. 71, l. 4, p. 71, l. 17 to l. 19, p. 76, l. 6 to l. 18).

The portion of said Finding wherein it is stated that the meeting referred to "was attended by Farr and other interested employees, as well as Frank Gonders, Jack Owens and Clyde Sitton" is contrary

to and unsupported by the evidence. Prior testified that approximately six or eight men attended this meeting, but the only ones he could recall were Frank Gonders, Bill Robinson, Clyde Sitton, Jack Owens, a man by the name of Weatherby and one by the name of Gilmore (Tr. pgs. 74 and 75). The evidence and records show that neither Weatherby nor Gilmore was an employee of the Boswell Company at that time (Tr. pgs. 74, 75). Contrary to the express statement in said Finding, Farr testified that he was working and did not attend this meeting on July 13 and that he heard about the meeting from some of the employees who were going (Tr. p. 333).

The statement in said Finding referring to Clyde Sitton as follows:

“Clyde Sitton, a nephew of Gordon L. Hammond, plant manager of respondent”

is misleading and is irrelevant to any of the issues in this case. No evidence was introduced showing any authority in Clyde Sitton to act or speak for or on behalf of any of the respondents. The above statement is misleading for the reason that it does not appear whether the words “plant manager of respondent” refers to Clyde Sitton or to Gordon Hammond. The evidence is uncontradicted that Gordon Hammond was the plant superintendent and that Clyde Sitton had no such position with the Boswell Company.

There is absolutely no evidence in the record to support the statement in said Finding that Gonders “is an old and faithful employee of respondent”.

Prior's testimony regarding his conversation with Gonders at the meeting of July 13, which was erroneously introduced over the objection of respondents, is incorrectly stated in said Finding. Prior testified that Gonders stated at said time that

"the employees of the Boswell Company were one happy family, that they were very well satisfied with 35 and 50 cents per hour and that they really wanted no organization in the plant" (Tr. p. 75).

The following statement in said Finding, to-wit:

"Those six or eight who were interested in the organization signed membership cards at that meeting"

is contrary to and unsupported by the evidence. The evidence shows that, with the exception of Gilmore, none of the men who attended the meeting of July 13 showed any interest in Prior's organization, and, on the contrary, were not interested therein. The evidence also shows without contradiction that none of the men present at said meeting signed membership cards at that meeting and that the only man present at the meeting who subsequently joined the union was Gilmore, and no applications for membership in the union were signed or taken from anyone prior to September 2, 1938, as shown by Prior's testimony (Tr. pgs. 81, 409 and 410).

The portion of said Finding wherein it is stated that Gilmore told Prior

"he had not been recalled to his job in the oil

mill when said mill started operations on July 1, 1938, because of his union activities”

is based entirely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and the said portion of said Finding incorrectly states the testimony of Prior, which was erroneously introduced. The only testimony relating to this meeting was the testimony of Prior as follows:

“He told me he had not been re-employed when the plant had started up on July 1st and that Mr. Hammond had been very indefinite as to any future employment with the J. G. Boswell Company” (Tr. p. 78).

The portion of said Finding wherein it is stated that Gilmore advised Prior of some of the anti-union activities of Gordon Hammond, including a conversation therein referred to which Gilmore claimed to have had with Hammond, is unsupported by any evidence. Although Gilmore testified to an alleged conversation with Gordon Hammond about June 1, 1938, the evidence does not show that these alleged matters were ever communicated by Gilmore to Prior.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 46.

Exception No. 47.

Respondents, and each of them, hereby except to Finding No. 23, page 16 of the Intermediate Report, upon the ground that certain portions hereinafter

designated do not fully or accurately state the evidence upon the matters therein mentioned.

E. F. Prior testified that on July 17, 1938, he filed a charge with the regional office of the Board at Los Angeles, charging, under oath, that the Boswell Company was guilty of unfair labor practices in that it had violated Section 8 (1) of the act. He testified that the filing of this charge was the next step in his organizational activities (Tr. p. 79, p. 410), and that the filing of such charge was his only organizational activity between July 13, 1938, and September 2, 1938, aside from an exchange of correspondence with Gilmore and Farr (Tr. p. 409, p. 410). He further testified that the only person with whom he had talked in Corcoran prior to the meeting of July 13 was Farr (Tr. p. 404) and that at the time of the filing of the charge above mentioned he had talked only with Farr, Gonders, Owens, Sitton, Wetherby and Gilmore (Tr. p. 404). He had not even discussed the alleged unfair labor practices with the management of the Boswell Company, and the evidence shows no investigation on his part before he filed this sworn charge. Since Prior testified that Gonders, Owens and Sitton showed no interest in his organizing project and since Wetherby was not a Boswell employee, this sworn charge was apparently based solely upon Prior's conversation with Gilmore who at that time was not an employee of the company.

The above charge was never served upon any of the respondents and during the hearing demand was

made on behalf of the respondents for the production of a copy of that charge for the purpose of testing the credibility of Prior and comparing the charges sworn to in the previous charge with the later ones which Prior signed, upon which the complaint and amended complaint were issued (Tr. pp. 400 to 403). The record discloses that before this request had even been completely stated the Trial Examiner called counsel to the bench for a consultation (Tr. p. 400). At that time, off the record, the Trial Examiner stated in substance to counsel that he didn't think the witness should be questioned about the former charge. When the proceedings resumed the request was completed upon the record for the production of the former charge, and the Trial Examiner erroneously sustained an objection to the demand and refused to direct the witness to produce a copy of the charge which was in his file, to which rulings respondents, and each of them, duly excepted and do hereby except.

Prior further testified that although Corcoran is located in the Twentieth Region he filed the above mentioned charge in the Twenty-first Region at Los Angeles, with the consent of the Regional Director, because Prior's office was located in Wilmington and it would be more convenient for him to have the matter handled by the Los Angeles office. He stated that he was later informed by the Regional Director of the Twenty-first Region that the charge must be filed in the Twentieth Region. As a result, Prior withdrew the charge and re-filed the same charge

the next day in the Twentieth Region at San Francisco (Tr. pgs. 484, 485).

As stated in the above mentioned Finding, Prior testified that at the meeting of September 2, 1938, with Louis T. Robinson, Gordon Hammond and William W. Boswell, he informed them that "the Union" had filed said charge with the Board (Tr. p. 83). This is shown by the uncontradicted evidence to be a misstatement of the fact by Prior since the Union had not been organized either at the time the charge was filed or at the time of said meeting and, in fact, was not organized until some time in October or November, 1938. (Tr. pp. 93-98)

Respondents, and each of them, hereby specify the foregoing as Exception No. 47.

Exception No. 48.

Respondents, and each of them, hereby except to Finding No. 24, pages 16 and 17 of the Intermediate Report, upon the ground that certain portions thereof, which are hereinafter designated, are contrary to and unsupported by the evidence and do not fully or accurately state the evidence on the matters therein mentioned.

The portion of said Finding wherein it is stated that Robinson said "that because of the floods and cost control they would not have a run of more than 10,000 bales * * *" is contrary to the evidence. Robinson's testimony in this regard was "that on account of the flood and the government crop control program we knew we wouldn't have over the 10,000 bale run * * *" (Tr. p. 2400).

The following portion of said Finding, to-wit:

“From Robinson’s own statement he brought Gilmore’s name into the conversation * * *

is contrary to the evidence in this regard. Robinson’s testimony shows that the name of Gilmore came up during the conversation, but he did not recall who brought it up (Tr. p. 2400, 2401). Prior’s testimony in this regard, however, was that when Robinson referred to the organization of the key men rather than the radical casual workers, etc., Prior asked Robinson if he was referring to Gilmore and Robinson stated that he was (Tr. p. 84). Consequently, the above portion of said Finding is directly contrary to the testimony.

The following portion of said Finding, to-wit:

“Prior, at the request of the regional office at San Francisco withdrew the 8 (1) charge”

is an incorrect and incomplete statement of the evidence. Prior’s testimony in this regard was that the charge was withdrawn because “It appeared, or we felt that the alleged violation was no longer being practiced and that it was no longer necessary to go ahead and press the charge” (Tr. p. 427). At that time Prior was asked to state, in his own words, what the alleged violation was, and the Trial Examiner erroneously sustained an objection to the question to which ruling respondents duly excepted and do hereby except (Tr. p. 428). In addition to the foregoing reason for withdrawal of the charge, Prior testified that the director of the Twentieth Region

sent Mr. Larson, one of the Board's investigators, to Corcoran for the purpose of investigating the charge; that Larson had lunch with Prior and Farr, that Prior outlined to Larson the reports from Gilmore and conversations with Farr, and that Larson, after completing his investigation on August 31, 1938, advised Prior that he felt there was not sufficient evidence, or it was impossible to secure sufficient evidence, to warrant the issuance of a complaint and he requested Prior to withdraw the charge if nothing further happened within a couple of weeks. Prior testified that the charge was withdrawn shortly after the four men, Andrade, Martin, Farr and Boyd Ely, had been placed back on the job (Tr. p. 428). The date of this event had been fixed by Prior's testimony as being just after his conference with Gordon Hammond on October 8, 1938, at which conference the employment of said men was discussed (Tr. p. 86 and 87). Prior later testified that the date on which the charge was withdrawn could have been as much as two weeks before October 8, or as much as two weeks following that time (Tr. p. 483).

Prior did not at any time deny that Robinson stated during the meeting therein referred to that "the company had no objection to any of its men joining any union that they saw fit * * *". Prior in fact admitted that he had been told by the management of the Boswell Company before November 18, 1938, that it was no concern of the company whether its men joined or didn't join a union (Tr. p. 428).

Respondents hereby except to the following portion of said Finding, to-wit:

“In view of Robinson’s own admission and the undersigned’s observation of both respondent and Prior, the undersigned believes that Prior’s version of the conversation is correct”

upon the ground that said conclusion is wholly unwarranted by the testimony of said parties at the hearing and as shown in the record.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 48.

Exception No. 49.

Respondents, and each of them, hereby except to Finding No. 25, page 17 of the Intermediate Report, on the ground that certain portions of said Finding are not supported by and are contrary to the evidence and do not accurately or fully state the evidence in the respects hereinafter specified.

Prior’s testimony with regard to the matters mentioned in said Finding was that on October 8, 1938, he told Gordon Hammond that he had been informed that Andrade, Martin, Boyd Ely and Farr had been laid off and the oil mill shut down, and these men had the understanding that they would not be re-employed because of their union activities. Prior explained to Gordon Hammond that there might be some misunderstanding and that there were no doubt rumors floating around on both sides. He testified that he then mentioned to Gordon Hammond some of the other cases in which he, Prior, had had to go

before the Labor Relations Board and told him he would like to clear up any misunderstandings. He testified that they discussed these four men and four other men who had previously been laid off and had not been re-employed. Gordon Hammond stated the reason the other four men had not been re-employed was that there was no part of the plant operating in which they had ever worked before or in which they had experience, but had Martin, Ely, Farr and Andrade applied for employment they would have placed them back on (Tr. p. 86, 87). The statement of this conversation as contained in the Intermediate Report is not only ambiguous but does not conform to the testimony.

The following portion of said Finding, to-wit:

“Prior left, picked up Martin and drove to the home of Andrade, while there, a brother of Hammond drove up and notified Andrade to report to work that afternoon”

does not correctly set forth the testimony. Prior's testimony in this regard was that while he was at Andrade's house a gentleman identified by Andrade and Farr as a brother of Gordon Hammond came up (Tr. p. 89). No evidence in the record shows that Gordon Hammond had a brother. The evidence further shows that Farr went to Oklahoma on or about September 26, 1938 and did not return to Corcoran until October 15 (Tr. p. 328).

The following portion of said Finding, to-wit:

“On October 11, Prior received notice from Martin that he, Martin, had been recalled to work”

is a mis-statement of and contrary to the evidence. Prior's testimony in this regard was that he received a “letter dated on or about October 11 from R. K. Martin stating that he had returned to work that day, or the day previous”. (Tr. p. 89). There was no evidence that respondent Boswell Company recalled Martin to work.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 49.

Exception No. 50.

Respondents, and each of them, hereby except to Finding No. 26, pages 17 and 18 of the Intermediate Report, on the ground that a portion of said Finding, as hereinafter specified is not supported by and is contrary to the evidence, and that said Finding does not completely set forth the testimony relating to the matter therein mentioned.

The portion of said Finding wherein it is stated that Gordon Hammond said the men in question “would be recalled to work” is contrary to the evidence. Prior testified that Gordon Hammond's statement in this regard was that had these men applied for employment they would have placed them back to work to which statement Prior replied that he would be very glad to explain to the men that if they applied to him they would be put back to work. (Tr.

p. 88, 89). Gordon Hammond's testimony in this regard was that he told Prior that they didn't have work yet to employ all these men but he was giving them work just as fast as they had work for them to do (Tr. p. 2558).

In addition to the above testimony, Gordon Hammond also testified that Martin, Farr, Andrade and Boyd Ely were mentioned in the conversation and he told Prior that Martin was in to see him just a few days before and Martin told him that he, Martin, had a job at the Kingsburg Oil Mill and they were going to call Gordon Hammond about it. He said that he told Prior that Boyd Ely hadn't worked in the gins at any time and that the mill wasn't running and that as soon as they had work for Ely they would pick him up. Hammond said that he told Prior that Andrade had worked at the gin and mill both, and as soon as they had work he would pick him up; that Farr had gone to Oklahoma and hadn't come back (Tr. p. 2558, 2559).

Martin's job in the Kingsburg Oil Mill was confirmed by his own testimony when he stated that he had asked Gordon Hammond to notify him when the superintendent of that mill called (Tr. p. 548, 549). Also Farr testified that he was in Oklahoma at the time of the above conversation (Tr. p. 328).

Respondents, and each of them, hereby specify the foregoing as Exception No. 50.

Exception No. 51.

Respondents, and each of them, hereby except to Finding No. 27, page 18 of the Intermediate Report,

upon the ground that said Finding does not completely set forth the evidence concerning the matter therein mentioned.

Prior testified that the only persons he could recall as being present at the meeting therein mentioned were Martin, Farr, Andrade and Spear (Tr. p. 91).

The evidence shows that up to this date Prior and his co-workers had succeeded in interesting only four or five employees of the J. G. Boswell Company in his union to the extent of signing applications for membership therein.

Respondents, and each of them, hereby specify the foregoing as Exception No. 51.

Exception No. 52.

Respondents, and each of them, hereby except to Finding No. 28, page 18 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence in the respects hereinafter mentioned. The evidence shows that application for the charter was made by Prior personally by sending a letter to Edward Vanderleur, representative of the American Federation of Labor, setting forth the names of the employees of the Boswell Company to be named on the charter. The charter when received by Prior from Vanderleur was dated October 26, 1938, (Tr. p. 96, 98). The evidence clearly shows that the parties named in said Finding did not sign the, or any, application for a charter, that the application was made by Prior personally and the date of such application was before October 26, 1938, as the application was forwarded by mail.

Respondents, and each of them, hereby specify the foregoing as Exception No. 52.

Exception No. 53.

Respondents, and each of them, hereby except to Finding No. 29, page 18 of the Intermediate Report, upon the ground that said Finding is an incomplete statement of the evidence relating to the matters therein mentioned.

Prior testified that the only persons who were present at the meeting of November 5, 1938, whose names he could recall, were Martin, Andrade, Spear, Farr and C. E. Powell (Tr. p. 94). Prior testified to the names of the officers elected as president, vice-president and secretary-treasurer, but he also testified that he couldn't remember the names of the other officers and those who were chosen on the Board of Trustees. (Tr. p. 116).

Respondents, and each of them, hereby specify the foregoing as Exception No. 53.

Exception No. 54.

Respondents, and each of them, hereby except to all portions of all of the Findings in said Intermediate Report relating to conversations alleged to have occurred between the complaining union employees, or any of them, and any or all of the following named persons: Tom Hammond, Joe Hammond, Julius Hammond, Bill Robinson, Kelly Hammond, Yankee Roberson, Rube Lloyd, Clyde Sitton, Oscar Busby and Bill Nichols, upon the ground that all of the above entioned portions of the Findings are based

entirely upon hearsay and incompetent testimony, all of which was erroneously introduced over the objection of respondents, and upon the ground that there was no evidence showing or tending to show any authority was conferred by respondents, or any of them, upon any of said persons to speak or act for or on behalf of any of the respondents or that any of said persons had any such authority, and upon the ground that said portions of all of the Findings are unsupported by any competent and credible evidence. Respondents, and each of them, duly objected, upon the foregoing grounds, to the introduction of testimony regarding all such alleged conversations hereinabove referred to, and the Trial Examiner erroneously overruled all of said objections. Respondents duly excepted thereto and do hereby except to each and all of said rulings.

The evidence clearly shows without contradiction that Louis Robinson was general manager for San Joaquin Valley of the Boswell Company (Tr. p. 2115, p. 2394); that Gordon Hammond was the plant superintendent of the Corcoran plant (Tr. p. 2395); that the authority of Gordon Hammond and Louis Robinson was limited by the head office but that they were the only persons in Corcoran who were authorized to speak for the Boswell Company concerning its business, or to bind the company. (Tr. p. 2395). Gordon Hammond was in charge of the manufacturing end of the plant and Louis Robinson was in charge of securing raw materials, financing and collections (Tr. p. 2396). The evidence is

clear that there was no one at the Corcoran plant, other than Louis Robinson and Gordon Hammond, who had any authority from the Boswell Company to employ or discharge any employees (Tr. pgs. 2165, 2396 to 2398) or to speak or act for the company on any employment matters, (Tr. pp. 2456-2458). No one at the plant carried the title of foreman and Louis Robinson testified that he would describe Gordon Hammond as the foreman. However, there are employees who direct the manner in which work on particular jobs should be done (Tr. pgs. 2159, 2160). None of these employees who direct certain jobs keep the time for other men on the same or any job. Gordon Hammond keeps time for all of the men (Tr. p. 2751, p. 2752). There was no evidence that any of the men above mentioned, or any employees, other than Gordon Hammond or Louis Robinson possessed any authority to speak for the company on any question of its labor policy, or upon any other policy.

The following is an example of the evidence in the record:

The undisputed evidence shows, for example, that Rube Lloyd is an expert carpenter and construction man (Tr. p. 2160), that he does not have men under him at the plant (Tr. p. 2748), that when he does a job outside the plant he takes the men designated by Gordon Hammond to do the job, that Gordon Hammond usually goes with him to lay out the work, that Lloyd directs the work and Lloyd and the other men

do the work. (Tr. p. 2749). He has no authority to employ or discharge employees. O. W. Busby is the most experienced man in the machine shop (Tr. p. 2162); he has no authority to hire or discharge employees (Tr. p. 2164); he does not keep time for any men working with him (Tr. p. 2752). The only evidence regarding Sitton was that he was a nephew of Gordon Hammond and had worked for the company for about two and one-half years (Tr. p. 2709). He did not have authority to hire or fire employees (Tr. p. 2164).

The absence of any authority to hire or fire or speak for or bind the company applies to each of the other men named (Tr. pgs. 2752, 2164, 2394 to 2398, 2159 to 2160).

The fact that the employees themselves recognized this limitation of authority is shown by the following testimony:

Martin testified that on November 18, 1938, after the trouble which occurred at the plant between the union and non-union men on that day they went into the office of Gordon Hammond who was in Los Angeles at that time. Among those present in the office were Rube Lloyd, Bill Nichols and Bill Robinson (Tr. p. 535). In spite of the presence of those persons in the office he testified as follows: "We just waited there for a long time, never did nobody with authority show up, and finally Mr. Robinson put his head out of the door and told us to go back

to work, he would be around to straighten it out" (Tr. pgs. 536, 537, corrected pages 607, 608). Martin further testified that on the same day, after they left Gordon Hammond's office and went back to work, that he had a conversation with Bill Robinson during which Martin stated, "If Mr. Hammond and Mr. Louis Robinson comes down here and says 'Go home' all right, but until they do we won't" (Tr. p. 540). He explained that he was referring to Gordon Hammond and Louis Robinson (Tr. p. 562). According to Martin, Tom Hammond was among those present at the gins at that time (Tr. pgs. 537 to 539).

Spear testified that on November 18, 1938, after they went back to the gins there was some difficulty about getting the non-union men to work with the union men (Tr. p. 879). He stated that Kelly Hammond (Tr. p. 872), Bill Robinson (Tr. p. 874), Joe Hammond (Tr. p. 883) and many others were around the gins, but he testified as follows: "as well as I can recall, I sat down on the stairs, in fact, I was stalling for time. I was waiting for somebody to come around." (Tr. p. 884). He testified that he was waiting for Louis Robinson (Tr. p. 982).

The only other testimony relating to the duties of the above mentioned men was the testimony of some of the complaining union men that they had from time to time been directed in the manner of doing their work by certain men above mentioned. Con-

sequently, there is no evidence to support any Finding that the respondents, or any of them, were bound by any acts or statements by the persons hereinabove mentioned and the evidence shows the contrary to be true.

Respondents, and each of them, hereby specify the foregoing as Exception No. 54.

Exception No. 55.

Respondents, and each of them, hereby except to Findings Nos. 30, 31, 32, 33, 34 and 35, and each of them, upon the grounds that, in the respects hereinafter mentioned, said Findings are not supported by any substantial, competent or credible evidence and are contrary to the evidence, that they are based largely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and upon the ground that they incorrectly portray the testimony and are misleading.

The evidence shows that James W. Gilmore was first employed by the Boswell Company in 1928 (Tr. p. 1255, p. 1269). Immediately prior to his employment he had been doing practically nothing and was working on a truck at Indio, California, (Tr. p. 1271). The last time he had worked in cotton mills before that was in 1921 or 1922 at Brawley, California (Tr. p. 1270). After his employment by the Boswell Company he did odd jobs and worked off and on with intermittent lay-offs until July, 1930, (Tr. pgs. 1272, 1273).

Some time after July 4, 1930, he left the employment of the Boswell Company because there

was nothing to do and he worked at various jobs around San Jose and Monterey. At one time during his testimony he stated that he went to Salinas during that time and worked in the fruit and vegetables, (Tr. p. 1273). Later he denied that he went to Salinas or worked in the fruit and vegetables (Tr. p. 1274). He then stated that during the time mentioned he worked at San Jose in cold storage and at Monterey in fruit canneries and that he also worked on the highway (Tr. p. 1274). He later stated that during that same time he worked in San Jose and also in the fish cannery at Monterey (Tr. p. 1277). At any rate he didn't return to work for the Boswell Company until September, 1931, (Tr. p. 1274).

He first testified that when he went back to work in 1931 he worked in the lint room until 1936 (Tr. p. 1256). Later he testified that when he returned to work in 1931 he helped put up the oil mill which had burned down (Tr. pgs. 1274, 1275), and later that he worked at odd jobs such as grinding barley (Tr. p. 1275). He stated that since 1936 he worked in the seed house but when the mill was not running he would cut weeds, do painting and odd jobs (Tr. p. 1257).

He first testified that he worked practically all of the time from 1931 (Tr. p. 1255, 1275). He later admitted on cross examination that in that period during the depression he was laid off and that even Gordon Hammond, the plant manager, went out and ran a ranch (Tr. p. 1275). Also he admitted

that he was laid off a few weeks in 1937, during which time he took a trip to Oregon (Tr. p. 1277), and that he was laid off about three weeks in 1936 (Tr. p. 1276).

As heretofore stated, the oil mill closed March 7, 1938. Gilmore was laid off March 19, 1938. He was re-employed on May 2, 1938 and laid off again on May 17, 1938, when the mill closed (Tr. p. 2626) (Board's Exhibit No. 3).

The evidence, and particularly the employment record of Gilmore, shows conclusively that although he worked for the Respondent Boswell Company off and on over a considerable period of time, he was not what would be termed a regular employee, but, on the contrary, worked almost entirely in the performance of seasonal work in connection with the normal seasonal operations of said respondent.

The portion of Finding No. 30 wherein it is stated that Gilmore "was recalled to work by respondent on the 2nd of May" is a misstatement of the evidence. There is no evidence in the record to support any finding that the company recalled Gilmore to work at that time, or at any time. The evidence merely showed that he was again employed.

The undisputed evidence shows and Gilmore himself admitted that after his layoff on May 17, 1938, he never applied for work from the Company again (Tr. pp. 1280 to 1282 and 2636).

Gilmore's testimony throughout was contradictory and unreliable and is entitled to little or no weight, especially is this the case insofar as his

testimony relating to union activities is concerned. In this regard Gilmore testified that the first thing he started to do was to try to organize a union. He said he could not place the date or the month but that he started some time in the spring of 1938. (Tr. p. 1258). In answer to the following question by counsel for the Board, "that was before you were laid off?", he answered "Yes" (Tr. p. 1258). Later he testified that he started talking about the union in January (Tr. p. 1259). He said that he talked with a majority of the boys about the union when he was working there, that after he was laid off he was down to the plant sometimes two or three times a week all through the summer and even after the union was started he kept talking to the boys. He stated that he never did sign any of them up but that he asked them to come to meetings (Tr. pgs. 1258 to 1260). He testified that he joined the union but that he couldn't remember the date, except that it was some time in the summer of 1938 (Tr. p. 1268).

The record shows that in spite of this alleged activity and his invitations to others to come to the meetings and the fact that he also joined the union and purported to be one of the early union organizers at the Boswell plant, he was not mentioned by any of the witnesses as having been present at any of the meetings. The evidence shows that he did not apply as a charter member of the union and did not sign anyone up in the union.

Gordon Hammond testified that several days be-

fore the mill closed in May, at which time Gilmore was working at the mill, he had a conversation with Gilmore, at which time Gilmore said that the dust was about to get the best of him and he didn't think he would work any more after the mill closed down at that time which would be in just a few days (Tr. pgs. 2627 to 2629). This conversation was denied by Gilmore (Tr. p. 1279). Gordon Hammon testified that he also had a conversation with Gilmore on May 17, 1938, the date that the mill closed, at which time Gilmore asked him if he could get his check that day and stated that he, Gilmore, was fixing to go to Oregon and that he had a job up there for \$6.00 a day. (Tr. p. 2626).

Gilmore denied the above conversation and denied that he had a job in Oregon but significantly admitted that he went to Oregon to visit his brother in 1938 (Tr. pgs. 1277, 1278).

Gordon Hammond testified that about the middle of June, 1938, Gilmore came to the office and asked if he could borrow a trailer to move to Tulare. Gordon Hammond said he would loan a trailer to him and did so (Tr. pgs. 2629, 2630). Gilmore denied telling Gordon Hammond that he was moving to Tulare but he admitted that he borrowed a trailer from Gordon Hammond about July, at which time he told Gordon Hammond that he was moving his goods out of the house he was living in. He denied that he stated he was moving to Tulare (Tr. p. 1281). He also admitted that on a later occasion, after July 14, 1938, he again borrowed the same

trailer from Gordon Hammond, at which time he told Gordon Hammond he wanted to move his daughter's stuff to Tulare (Tr. p. 1282).

The evidence shows that in spite of the lack of memory of the times when various incidents occurred, even to the extent of failing to remember when he joined the union, he testified specifically to an alleged conversation with Gordon Hammond in June of 1938 and testified specifically to the place where such alleged conversation occurred.

The portion of Finding No. 30 wherein Gilmore's testimony purporting to relate Hammond's statement is set forth as follows: "I thought you knew quite a bit about threatening to start a union" is an incorrect statement of Gilmore's testimony. Gilmore testified that Gordon Hammond stated: "I thought you knew quite a bit about trying to start a union". (Tr. p. 1262). The portion of said Finding relating to said alleged conversation is also incomplete. Gilmore testified that at the conclusion of the alleged conversation he said to Hammond, "I am not sneaking around". "I will sign you up with the union if you want to come in," after which Gordon Hammond laughed and walked away (Tr. p. 1262). Gordon Hammond denied that any such alleged conversation ever occurred (Tr. pgs. 2624, 2625). The evidence shows, without conflict, that Gilmore was not working at the plant at the time of this alleged conversation in June, 1938. (Boards Exhibit No. 3).

The portion of said Finding No. 30, to-wit:

"From his observation of the witnesses and con-

sidering all of the testimony of Gilmore and Hammond, the undersigned believes the testimony of Gilmore”

is not justified by the manner or demeanor of the two witnesses in question at the hearing, or by the testimony of each of them as shown by the record. The record discloses that Gilmore’s testimony is replete with self-contradictions and indefinite answers, except in relation to the conversations which he claims took place.

The following portion of Finding No. 31, to wit, “on the first of July 1938, the mill reopened but Gilmore was not recalled to work” is unsupported by and contrary to the evidence. As above pointed out there is no evidence that the Company recalled Gilmore to work at any time, or that there was any promise, agreement or obligation that he would be recalled at any time.

The portion of Finding No. 31 relating to the alleged conversation between Gilmore and Julius Hammond is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents and is contrary to and unsupported by the competent and credible evidence. No evidence was introduced that showed or tended to show that Julius Hammond was “oil mill foreman”, and no evidence was introduced showing or tending to show any authority conferred by any of the respondents to Julius Hammond to speak or act for or on behalf of any of the respondents or that he had any such authority. Respondents hereby re-

refer to and incorporate herein the whole of Exception No. 54 the same as if set forth herein in full. Respondents duly interposed an objection to the question calling for said alleged conversation upon the foregoing grounds and the Trial Examiner erroneously overruled said objection (Tr. p. 1265, l. 22 to p. 1266, l. 4). Respondents and each of them duly excepted to said ruling of the Trial Examiner hereinabove mentioned and do hereby except to said ruling.

Also the portion of said Finding No. 31 relating to said alleged conversation does not correctly set forth the testimony which was erroneously introduced. Gilmore did not testify that he applied to Julius Hammond for work (tr. p. 1267).

It is stated in said Finding that:

“During the first half of July after the mill had reopened Gilmore met Hammond at the plant between the main office and the scale office. Gilmore asked Hammond if his work had been satisfactory and Hammond agreed that it had been. Gilmore asked Hammond why he had not been put back to work. Hammond told Gilmore that there was no work for him to do. Gilmore asked Hammond if he was not called back to work because of the union. Hammond replied, ‘I would not exactly say that was it’, and said, ‘I have heard you were but I don’t believe everything I hear.’ ”

The foregoing portion of said Finding is ambiguous and misleading, and does not clearly or fully state

the evidence with respect to said alleged conversation. It is not shown in said statement which Hammond the alleged conversation was with. Gilmore testified this alleged conversation was with Gordon Hammond. Gilmore testified regarding the alleged conversation as follows:

“A. Yes. I asked him if my work had been satisfactory and he said it had; and I asked him why there wasn’t any work for me. And he said there wasn’t anything for me to do * * *

“And I asked him if it was because of the union and he said, ‘I wouldn’t exactly say that it is.’

“And I asked him if he thought I was in with the union. And he said, ‘I have heard you were, but I don’t believe everything I hear’” (Tr. pp. 1263 and 1264).

This conversation was categorically denied by Gordon Hammond (tr. p. 2625).

The portion of said Finding No. 31 wherein it is stated that Gilmore testified that “he had been in Corcoran at all times” is not supported by the evidence. No evidence was introduced to that effect and no evidence was introduced to show that Gilmore was available or willing to work in the oil mill at the Boswell plant at the time the mill opened on July 1, 1938.

The portion of said Finding No. 31 wherein it is stated that the “testimony of Gilmore shows that he worked for some time during the summer of 1938 on a new high school building in Corcoran” is contrary to the evidence. His testimony which was given

on June 1, 1939, was that he had been employed at the high school building "this winter" (Tr. p. 1268) and "over the period of the last six months".

The evidence shows that, as elsewhere pointed out herein, Prior concerned himself with the employment of members of his union even to the extent of engaging in a conference with Gordon Hammond on October 8, 1938, regarding the re-employment of Farr, who was in Oklahoma at the time, and Martin, who was anticipating a job with another firm. The evidence fails to show that any mention of Gilmore's employment was made by Prior in any of his numerous conversations with Gordon Hammond or Louis Robinson. The evidence further shows, as above pointed out, that the charge filed by Prior on July 17, 1938 was based upon alleged discrimination against Gilmore and that said charge was voluntarily withdrawn by Prior shortly before, or after, October 8, 1938, because he felt that the alleged violation was no longer being practiced (Tr. p. 427) and because the Board investigator, after investigating the charge, advised him that the evidence was insufficient to warrant the issuance of a complaint (Tr. pp. 484-487).

The portion of Finding No. 32 wherein it is stated that Robinson "according to his own admission, brought Gilmore's name into a conversation he was having at that time with Prior", is contrary to the evidence. As above pointed out in Exception No. 48, Prior testified that he, Prior, brought the name of Gilmore into the conversation referred to (Tr. p.

84) and Robinson testified that he did not recall who first mentioned the name of Gilmore (Tr. p. 2401). Also contrary to the express statement in Finding No. 32, the evidence does not show that Robinson told Prior that he had heard that Prior was working with Gilmore in attempting to organize respondent's employees. Likewise, contrary to the statement in said Finding, the evidence fails to show that Robinson told Prior that Gilmore had not been employed since the spring of 1938.

Findings Nos. 33 and 34, in their entirety, are unsupported by and contrary to the evidence. The evidence shows that Gilmore was not an employee of long standing but, on the contrary, worked only periodically for the Boswell Company and only during seasonal operations. The evidence fails to identify any person named John Hammond.

There was no evidence whatsoever that Gilmore was *persona non grata*, and it is clear that that was not true as shown by the fact that Gordon Hammond twice loaned a trailer to Gilmore after his employment with the company had ceased.

The following portion of Finding No. 34, to-wit:

"The only thing against him being his union activities—for nothing else was shown"

purports to shift the burden of proof from the Board to respondents, which is contrary to law.

The following portion of Finding No. 35, to-wit:

"The undersigned * * * finds that Gilmore was refused reinstatement to his former position with the respondent on July 1, 1938 when the

oil mill reopened, because of his union activities”

is contrary to and wholly unsupported by the evidence, as shown by the evidence hereinabove discussed.

Respondents, and each of them, hereby specify the foregoing as Exception No. 55.

Exception No. 56.

Respondents, and each of them, hereby except to Findings Nos. 36, 37, 38, 39 and 60, and each of them upon the ground that in the respects hereinafter specified said Findings are contrary to and unsupported by the evidence, are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and incorrectly and incompletely set forth the testimony relating to the matters therein mentioned.

Finding No. 60 does not contain a complete and accurate statement of the evidence relating to the matters referred to in said Finding. The evidence shows that Farr's employment was of a seasonal nature depending upon the work to be done at Respondent Boswell Company's plant.

His first employment was as a ginner in September 1936 (Tr. pp. 260, 303, 310). He continued to work on this job until the ginning season ended in January 1937, (Tr. pp. 260, 261) when he was transferred to the oil mill, where he worked filing saws for two or three months (Tr. p. 260). He then worked at repairing machinery until the mill started again (Tr. pp. 260, 261) at which time he did repair

work and worked as a linterman in the mill. He worked at these last mentioned jobs until July 19, 1937, which was the end of the milling operations (Tr. p. 262).) He admitted that he did not work continuously from September 1936 to July 1937, but had occasional lay offs during said period of time (Tr. p. 310).

On July 19, 1937, Farr quit and went to work for the San Joaquin Cotton Oil Company at Bakersfield. He remained there for about four months and while employed there he worked the same hours and received approximately the same pay as he had previously worked and received at Boswell Company (Tr. pp. 262, and 312).

He returned to Corcoran, asked for work (Tr. p. 314), and was reemployed by the Boswell Company on November 15, 1937 (Tr. p. 262), which was approximately two months after the gins had started operations (Tr. p. 2534). He was hired as a ginner, but only worked as a ginner part of the time, and at other times dried cotton (Tr. p. 262). He worked at these jobs until January 1938, which was the time *all except 2 of* the last of the gins closed down for that season (Tr. p. 2534). He then went to work as a linterman in the oil mill (Tr. p. 263). He testified that he continued as a linterman in the oil mill from that time "until September 28, 1938, at the time the season of that year was completed of crushing seed" (Tr. p. 263). The undisputed and stipulated evidence in this case shows that the oil mill closed March 7, 1938, and did not reopen until May 3, 1938; that

it closed again May 17, 1938, after which it did not reopen until July 1, 1938; that it closed September 27, 1938, at which time the crushing of the 1937 seed had been completed (tr. pp. 2550 and 2551).

About September 26, or 28th, 1938, Farr left work and went to Oklahoma where he stayed until October 15, 1938 (Tr. p. 388, p. 263). Gordon Hammond testified that when Farr was talking with him about going to Oklahoma Farr said he wanted to farm next year and he had a piece of land in view (Tr. p. 2580). Farr admitted that in the fall of 1938 he discussed farming with Gordon Hammond (Tr. p. 386) but later denied that he stated that he intended to farm (Tr. p. 288). When Farr returned on October 15, 1938, he again was employed by the Boswell Company as a ginner and worked until November 18, 1938 (Tr. p. 328). He was carried on the payroll of the Boswell Company to and including December 3, 1938 at which time the gin on which he had been working before he left (Gin No. 2) closed and the job ended (Tr. p. 2547; Board's Exhibit No. 3, Boswell Exhibit No. 20). His pay was continued even though Farr did no work for the Boswell Company after November 18, 1938 (Tr. pp. 375, 376) (Board's Exhibit No. 3). Prior testified that as early as March 15, 1938, he talked with Farr regarding the organization of a union in the Boswell plant (Tr. p. 71). When questioned on cross-examination to bring out the fact that Farr had been openly engaged in union activities since early in 1938, Farr denied the testimony of Prior that he and Prior had discussed union

organization at the Boswell plant but he admitted talking with Prior in March (Tr. pgs. 335, 336).

On July 6, 1938, Farr gave to Prior a list of some of the employees of the Boswell Company for the purpose of calling a union meeting (Tr. p. 300, 333), and, according to Prior, they discussed the organization of employees at the Boswell plant (Tr. pgs. 72, 73).

On September 2, 1938, a union meeting was held at Farr's home, at which he, Martin and Wingo joined the union (Tr. pgs. 80, 81, 341).

After that time Farr invited employees of the Boswell Company to union meetings and they came in response to his invitation (Tr. pgs. 341, 342). He started to talk about the union to other employees who came to the meetings (Tr. p. 338).

On October 8, 1938, while Farr was in Oklahoma, Prior, as union representative, had a conference with Gordon Hammond for the purpose of discussing with Gordon Hammond the reemployment of Farr and certain others (Tr. pgs. 2557 to 2559 and p. 88).

After all of the foregoing, Farr was re-employed about October 15, 1938 and was given steady employment until he left his employment on November 18, 1938.

The portion of Finding No. 37 wherein it is stated that Gordon Hammond had the alleged conversation referred to with Farr "in August or the first part of September, 1938", is an erroneous statement of the evidence. On the contrary, Gordon Hammond

testified that the conversation referred to in said Finding took place about the middle of September (Tr. p. 2574).

Finding No. 37 is not a complete statement of the testimony of Gordon Hammond relating to the matters referred to therein.

Gordon Hammond testified he had received a report from one of the Mexican employees that Farr had approached such employee and one of the other Mexican employees while on the job, and had asked them to sign some paper on the representation that such paper came from the office and Louis Robinson and if it was signed they could not be laid off and would get more money, when, in fact, there had never been any such paper come from the office. (Tr. pp. 2574, 2575).

Gordon Hammond testified that he told Farr of the report which he had received and Farr denied asking the Mexicans to sign any such paper. Gordon Hammond denied that anything further was said in the conversation regarding the union or working conditions (Tr. p. 2574, p. 2575).

Finding No. 36 is unsupported by any substantial evidence is contrary to the evidence and is an incomplete statement of the testimony therein referred to. The portion of Farr's testimony set forth in said finding made no reference to the Mexican employees and Farr denied that Gordon Hammond had, in that conversation, referred to the report from the Mexicans (Tr. p. 328). However, it is significant that a portion of Farr's testimony which is omitted from

the Finding was to the effect that following the conversation, as set forth in said Finding, Gordon Hammond stated that he might have misunderstood those Mexicans because he couldn't understand them very well (Tr. p. 266, p. 327).

The following portion of Finding No. 37, to-wit:

“The undersigned believes the testimony of Farr”

is unjustified either by the manner or demeanor of the witnesses while testifying, or by the testimony as it appears in the record, and is unsupported by the competent and credible evidence.

Farr testified he worked in the oil mill as a linterman from January 1938 until the end of the seed crushing season in September 1938 (tr. 263), whereas the undisputed and stipulated evidence shows that during the period of time he claims he was working at the mill, the mill was in fact closed for a total of about two and one-half months during such time.

Farr claimed that he complained to Gordon Hammond on different occasions that the working hours at the Boswell plant were too long (tr. 265 and 319), but reluctantly admitted upon cross examination that during the four months period that he worked for the San Joaquin Cotton Oil Company at Bakersfield in the summer and fall of 1937, he worked the same hours per day and received approximately the same amount of pay that he had been working and receiving while employed by the Boswell Company (tr. 312).

On direct examination he remembered and testi-

fied in detail to alleged conversations and other matters concerning which he was examined. However, upon cross examination, his answers were evasive and showed lack of observation and memory.

Farr testified that he worked in the gins and elsewhere about the plant both in 1937 and 1938. The undisputed and stipulated evidence showed that considerably over four times as much cotton was handled and processed at the plant in 1937 as in 1938, and that more than twice as many men were employed in the ginning season 1937 as in the ginning season of 1938. In spite of these facts, Farr testified as follows:

“Q. I * * * did you notice any difference between the two seasons, so far as the volume of cotton in the Boswell Plant?

A. I don't know as I paid any attention to it. I had all I could do both times.” (Tr. p. 305).

He was also asked the following questions and gave the following answers:

“Q. Did you notice any difference in the number of men employed at the Boswell Company during the two seasons, that is, as between the '37-'38 season and the '38-'39 season?

A. No, sir, I didn't have any way of knowing the employment of both sides.

Q. I am just asking you for your observation as to the number of men around the plant.

Did it impress you that there were more men during one season than during the other?

A. There were men working last year that never had worked before.”

When this last answer was stricken as not responsive, he testified as follows:

“The Witness: I couldn’t say.

Q. (By Mr. Clark): In other words, so far as you are concerned, you cannot tell us?

A. I couldn’t tell you.

Q. Whether or not you noticed that there were more men in one season than in the other, is that true.

A. I couldn’t say, for I don’t know.” (Tr. 306).

On cross examination Farr at first testified that up to the time of one of his alleged conversations with Gordon Hammond in July or August 1938, he had not told anybody he was attempting to organize the American Federation of Labor Union at the Boswell plant at Corcoran and hadn’t been attempting to organize (tr. 335). Later, on cross examination, however, he was obliged to and did admit that as early as March 1938 he met with Prior (tr. 335), that he also met with Prior again in July, and delivered the list of names of employees furnished by Gilmore (tr. 337). He was asked if he had any meeting with Prior at his house from July clear on until September 2, and replied “I can’t remember of it. I can’t testify to that, for I don’t remember of anything up until about that time.” (tr. 337-8).

When asked on cross examination concerning statements made by various persons present at the meeting which was held November 17, 1938, between Prior, Spear, Martin and Farr, and Gordon Ham-

mond, Farr could remember practically none of the statements which Prior had previously testified were made by various parties at this meeting (tr. 351-3).

Finding No. 38 is based solely upon hearsay and incompetent testimony erroneously admitted over the objection of respondents, and said Finding is unsupported by any substantial, competent and credible evidence. No evidence was introduced showing or tending to show that any authority was conferred upon Tom Hammond to speak for or on behalf of any of the respondents or that he had any such authority.

The respondents, at the time of the hearing, objected to the introduction of testimony by O. L. Farr, regarding an alleged conversation with Tom Hammond during the month of September, 1938, upon the ground that such conversation was hearsay, not binding upon any of the respondents, and with respect to the respondent Boswell Company specifically, that there was no authority shown in the record from the Company to Tom Hammond to speak for it with relation to any of the matters under investigation in this proceeding. This objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (tr. pp. 274-5). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of said objections. Respondents, and each of them, hereby restate and incorporate herein, with the same effect as though stated herein in full, Exception No. 54. The evidence further

shows that Farr was re-employed by the Boswell Company on October 15, 1938, which was after the alleged conversation referred to in said Finding is claimed to have occurred.

Finding No. 39 is based solely upon hearsay and incompetent evidence erroneously admitted over the objection of respondents, and it is not supported by any competent and credible evidence. No evidence was introduced which shows or tends to show that any authority was conferred upon Joe Hammond to speak for or on behalf of any of the respondents or that he had any such authority. Respondents duly interposed an objection to the question calling for the testimony referred to in said Finding upon the grounds that the testimony sought to be elicited was hearsay, incompetent, irrelevant, and immaterial, not binding on any of the respondents, particularly on the respondents Exchange and Associated Farmers, are not binding on the respondent Boswell Company for the reason that no authority had been shown from the Company to Mr. Joe Hammond to speak for it with relation to the matters under investigation in said hearing. This objection was overruled by the Trial Examiner and an exception was taken thereto (tr. 267-8). Respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection. The undisputed evidence also shows that both Tom Hammond and Joe Hammond had been expressly instructed by Gordon Hammond, plant superintendent, as early as September 1938, not to

say anything to any of the employees about the union and had informed them that the employees had a right to join a union (Tr. p. 2563). This same information regarding the right of the men to join any union they chose was also stated to Prior, Spear, Martin and Farr during their various conversations with Gordon Hammond and Louis Robinson (Tr. pp. 2405-2406; 2440).

The evidence further shows that Farr was re-employed on October 15, 1938, after the time when said alleged conversation was claimed to have occurred.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 56.

Exception No. 57.

Respondents and each of them hereby except to the whole of Finding No. 40, page 22 of the intermediate report, except the last sentence thereof in which it is stated that "Gordon L. Hammond denied he received such a letter from J. G. Boswell", upon the ground that the portion of said finding above excepted to is based entirely upon hearsay and incompetent testimony which was erroneously introduced over the objection of respondents, and upon the ground that said portion of said finding is contrary to the evidence and not supported by the competent and credible evidence, and upon the ground that said portion of said finding is an incomplete and inaccurate statement of the testimony.

Evidence shows that R. K. Martin was first employed by the Boswell Co. on September 16, 1930 (Tr. p. 515). He started working in the pressroom in the

gin tying cotton and was paid 30c per hour (Tr. pp. 515 and 516). He worked until April 1, 1931, at which time he quit and went back to Georgia (Tr. p. 516). He did not return to apply for work until August 4, 1934, at which time he was again employed by the Boswell Co. (Tr. p. 516). At that time he worked stacking grain in the warehouse for about two weeks and then did odd jobs until the ginning started in September, 1934 (Tr. p. 517), when he worked as pressman in the gin and received 35c per hour (Tr. p. 518). He continued that work until the end of the ginning season in January or February 1935 (Tr. p. 518), and then he did outside odd jobs with lay-offs a few days at a time until June, 1935, when he worked as a helper in the expeller room in the oil mill (Tr. pp. 518 and 519). He testified that he has done that work ever since, except that he ginned a few days (Tr. p. 519). He later testified that in September, 1937, he quit again and took a job with another firm where he worked until March of 1938 (Tr. pp. 520 and 521, p. 546). He was again employed at the Boswell Co. in March, 1938, and worked for about two weeks when he was laid off. At that time he went to Colorado and did not return to the Boswell Co. until about May 17, 1938 (Tr. p. 522, pp. 546 and 547, pp. 579 and 580). He then worked repairing machinery in the oil mill for about 20 or 30 days until the mill started and then he worked in the mill (Tr. p. 548).

Martin joined the union on September 2, 1938 (Tr. p. 522).

After September 2, 1938, he took an active part in union organization and the solicitation of members. He talked with numerous employees regarding joining the union (Tr. p. 550). He attended various union meetings during the summer and fall and took prospective members with him. He talked about the union with a lot of the employees (Tr. p. 551).

When the mill closed on September 27, 1938 (Tr. pp. 2550 and 2551), Martin was laid off (Tr. p. 548). Gordon Hammond testified that Martin told him he expected a job at a mill at Kingsburg and asked Gordon Hammond to let him know when the superintendent called for him (Tr. pp. 2558 and 2559). This testimony was substantially confirmed by Martin (Tr. pp. 548 and 549; see correction in stipulation dated July 6, 1939).

On October 8, 1938, as above discussed, Prior, as union representative, had a conference with Gordon Hammond for the purpose of discussing the re-employment of Martin and certain others (Tr. pp. 2557 to 2559, and p. 88).

Some time in October 1938, which date has been fixed by L. A. Spear as between the 5th and 10th of October, Martin, Farr and Spear, acting as a union committee, called upon Gordon Hammond to discuss hours and working conditions (Tr. pp. 885 and 886, and pp. 902 and 903).

After all the foregoing, Martin was re-employed by the Boswell Co. on October 10, 1938, at which time his pay was raised from 40 to 50c per hour (Tr. pp. 520 and 549). His work at that time consisted

of ginning (Tr. p. 520) and he was given steady employment from that date until he left the Boswell plant on November 18, 1938 (Tr. p. 549). He was carried on the payroll of the Boswell Co. until November 26, 1938, at which time the gin on which he had been working before he left (Gin No. 4) had closed and the job ended (Tr. p. 553, p. 2549; Board's Ex. No. 3; Boswell Exhibit No. 17; Tr. pp. 567 and 568). His pay was continued until November 26th even though Martin did no work for the Boswell Co. after Nov. 18, 1938 (Tr. p. 568).

Respondent duly interposed objections to the questions calling for the testimony upon which the above specified portion of Finding No. 40 is based. Said objections were based upon the ground that the questions referred to called for hearsay and incompetent evidence which was not binding in any way upon any of the respondents and was not authorized and no proper foundation laid. The trial examiner erroneously overruled said objections and permitted the testimony upon which said portion of said finding is based and respondents duly excepted thereto (Tr. p. 523, lines 11-18, p. 524, lines 3-5). Respondents also moved to strike said testimony upon the same grounds, and the trial examiner erroneously denied said motion to strike and respondents duly excepted thereto (Tr. p. 524, l. 23, to p. 525, l. 1). No evidence was introduced which showed or tended to show any authority conferred upon Tom Hammond to speak or act for or on behalf of any of the respondents or to show that he had any such author-

ity, and said hereinabove specified portion of said Finding No. 40 is wholly unsupported by any competent evidence.

The evidence further shows, as above mentioned, that on October 10th, after the time when the alleged conversation above mentioned is claimed to have taken place, Martin was re-employed and his wages were raised.

The complete unreliability of Martin's entire testimony is demonstrated by the inconsistencies and conflicting statements, some of which are as follows:

When questioned concerning the union meeting which was held the night of November 16, 1938, Martin testified there were some 18 or 20 persons present at said meeting, but he could name only nine of them, notwithstanding the fact that he was secretary of the union and had kept minutes of the meeting (tr. 556-8). Among the nine persons present who were named by him was E. C. Ely (tr. 556). When Martin was testifying later in the hearing, in connection with the Board's alleged case against the Associated Farmers, and was asked if E. C. Ely was present at said meeting of November 16, he first testified as follows:

"A. I don't remember about that meeting, whether he was or was not.

Q. Would you say he wasn't there?

A. He wasn't there during the meeting, I know.

Q. Well, would you say that he wasn't there sometime during the gathering?

A. No, wouldn't say he wasn't". (tr. 1753).

The evidence shows without dispute that on November 17, Prior and the union Committee consisting of Spear, Farr and Martin met with Gordon Hammond (Tr. p. 125), and Prior testified that he reported the result of this meeting to a union meeting which was held on the night of November 17, 1938 (Tr. p. 475). However, when Martin was asked upon cross examination if a union meeting was held on the night of November 17, 1938, he testified he did not remember whether or not such a meeting was held (Tr. p. 559).

On cross examination, Martin testified that when he went to Colorado, after having worked about 2 weeks in March 1938, for the Boswell Company, he came back to Corcoran and went to work about May 17, 1938. When asked if the oil mill had started before he got back, he testified that it was not running when he got there and hadn't been for some time before (Tr. p. 547). However, the undisputed and stipulated evidence shows that the mill was running May 17, 1938 and closed down that day and reopened again July 1, 1938 (Tr. p. 2551).

Respondents and each of them hereby specify all the foregoing as Exception No. 57.

Exception No. 58.

Respondents, and each of them, hereby except to Finding No. 41, upon the ground that said Finding is contrary to and unsupported by the evidence, and is based solely upon hearsay and incompetent evidence erroneously introduced over the objections of

the respondents. Respondents duly interposed an objection to the question calling for said testimony upon the ground that it called for hearsay and was not binding upon any of the respondents, no authority having been established from the respondents to Tom Hammond to speak for them with respect to any of the matters under investigation in this case, and upon the ground that it was incompetent, irrelevant and immaterial. The trial examiner erroneously overruled this objection (Tr. p. 1292, ls. 11-17) and permitted this testimony to be introduced to which respondents duly excepted and do hereby except. Likewise, Finding No. 41 does not correctly state the testimony which was erroneously introduced as above stated (see Tr. p. 1292, ls. 18-25). In connection with the alleged conversation the evidence showed that Griffin's own testimony was that he joined the union on Nov. 15th or 16th, 1938, which was 9 or 10 days after said alleged conversation is claimed to have occurred. There was no evidence introduced which showed, or tended to show, that respondents conferred any authority upon Tom Hammond to speak or act for or on behalf of any of the respondents or that he had any such authority.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 58.

Exception No. 59.

Respondents, and each of them, hereby except to Finding No. 42, page 23 of the Intermediate Report, upon the ground that said Finding is irrelevant to

the issues in this case, and upon the ground that the statements in said Finding referring to conversations related therein are based solely upon hearsay and incompetent testimony erroneously introduced over the objections of respondents, and upon the ground that said Finding is unsupported by and contrary to the competent and credible evidence.

George Hammond referred to therein has never been identified in the record. No evidence was introduced showing or tending to show any authority conferred by respondents upon any of the persons mentioned in said paragraph except Louis T. Robinson and Gordon L. Hammond to speak or act for or on behalf of any of the respondents or showing that any of said persons except Louis T. Robinson or Gordon L. Hammond had any such authority.

Respondents hereby restate and incorporate herein, with the same effect as if stated herein in full, Exception No. 54.

Any of the persons named in said Finding who were available to the respondent were equally available to the Board but the Board chose to rest its case on remote uncorroborated hearsay evidence.

Respondents, and each of them, hereby specify the foregoing as Exception No. 59.

Exception No. 60.

Respondents, and each of them, hereby except to Finding No. 43, pages 23 and 24 of the Intermediate Report, upon the ground that it is contrary to the evidence and unsupported by any competent and credible evidence, and upon the ground that the con-

clusions of the Trial Examiner therein stated are unwarranted and unsupported by the evidence.

The undisputed evidence shows that Gordon Hammond is Plant Superintendent at the Corcoran Plant and has been for about 14 years last past; that no one in Corcoran, other than Louis T. Robinson and Gordon L. Hammond, is authorized to speak for the Boswell Company with respect to any matter concerning its business (Tr. p. 2395), or to bind the company; that Mr. Hammond has charge of the manufacturing end of the plant and is in charge of labor in the plant (Tr. p. 2396), and there is no one at the Corcoran Plant, other than Louis T. Robinson or Gordon Hammond, who has authority from the Boswell Company to employ or discharge any of the employees (Tr. p. 2397).

The evidence also shows that none of the alleged supervisory employees named in said Finding is classified as, or has or occupies the position of, foreman at the plant, and that they, and each of them, as well as all other employees at the plant, are under the direct supervision and control of Gordon L. Hammond, Plant Superintendent, and that whatever acts or things are done by them in connection with their work are done at the direction and under the supervision of Gordon L. Hammond. The evidence shows that these facts were known to, and recognized by, all of the employees as illustrated by the following instances, among others, to wit:

The testimony of Spears himself shows that he recognized this fact, as he testified that on the morn-

ing of November 18, after Mr. Louis T. Robinson had instructed all of the men to return to work, he left the office and returned to No. 1 gin; that he saw Kelley Hammond, Bill Robinson, and Joe Hammond there, but after he found the non-union men apparently would not work with the union men, he sat down on the stairs; that he was stalling for time and waiting for somebody to come around, but Louis T. Robinson did not come out (Tr. p. 884). He also testified, on cross-examination, that he saw Joe Hammond at this time while he, Spear, was still waiting for Mr. Louis Robinson (Tr. p. 989).

R. K. Martin testified that, after he returned from the office to the gin on the morning of November 18, 1938, he talked with Bill Robinson, who told him Tommy Hammond had said not to start the engines yet, that it seemed like either the union men run the plant or the non-union, and the non-union employees were not going to work with him, and asked what he, Martin, was going to do. Martin replied "If Mr. Hammond and Mr. Louis Robinson comes down here and says 'go home', all right, but until they do we won't" (Tr. p. 538-40). On cross examination, Martin again repeated this statement, testifying that he told Bill Robinson "That we would go home if Mr. Hammond or Louis Robinson said to go home" (Tr. p. 562, 563). He testified he was referring to Gordon Hammond. (Tr. p. 563).

Prior himself testified that one of the reasons that he called upon Gordon Hammond on November 17, 1938 was "we wanted a clarification by someone in

charge as to the exact status of Tom Hammond and Joe Hammond, and whether they were authorized to give orders after orders had been given them by Gordon Hammond (Tr. p. 467). Gordon Hammond informed him that Tom Hammond and Joe Hammond were not authorized to hire or fire anybody or to make any statements against the union (Tr. pp. 468 and 474).

Respondents, and each of them, hereby restate and incorporate herein, with the same effect as if stated herein in full, Exception No. 54.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 60.

Exception No. 61.

Respondents, and each of them, hereby except to Findings Nos. 44 and 45, pages 24 to 26 of the Intermediate Report, upon the grounds that certain portions of said Findings are contrary to and unsupported by the evidence, are based solely upon hearsay and incompetent evidence erroneously introduced over the objections of respondents, and are incomplete and inaccurate statements of the evidence.

L. E. Ely was first employed by the Boswell Company in September or October of 1936 and he worked at that time as a hay cutter, receiving 30c per hour (Tr. p. 1189). He was laid off after working two months and was not re-employed until September, 1937, at which time he worked around the gins and sacking the seed and was paid 35c per hour (Tr. pgs. 1189, 1190). The gins commenced operations about

September 20, 1937 (Tr. p. 2534). He worked at that type of work until November of 1937 and then worked as press helper on No. 4 gin from November until February, 1938 (Tr. p. 1190). The undisputed evidence shows that the ginning of the 1937-38 cotton was completed the latter part of February, 1938, when the last of the gins was closed for that season (Tr. p. 2534-7). After the last of the gins closed down he did odd jobs in the gin and out in the yard and hauled sand, and continued this type of work until March 9, 1938, at which time he was laid off.

He testified that he was re-employed about June, 1938 and worked in the lint room of the oil mill, receiving 35c per hour (Tr. p. 1191). He testified that he did that work for two weeks and was then laid off again (Tr. p. 1191). The undisputed and stipulated evidence shows that the oil mill did not operate between May 17, 1938 and July 1, 1938 (Tr. 2551), and Board's Exhibit No. 3 shows that Ely was re-employed in May rather than June, as Ely testified. Ely was re-employed in July and worked at baling straw. He testified he did that work about six weeks and was again laid off (Tr. p. 1192). Board's Exhibit No. 3 shows that he worked on this occasion only until the week ending August 4. Ely testified that he went to Texas about the 1st of October and returned about October 15, 1938 (Tr. pp. 1246, 1247). After this lay-off, he testified that he was re-employed in October, 1938 (Tr. p. 1999), and Boswell's Exhibit 9 (a) and Board's Exhibit 3, shows that he was in fact re-employed on October 24, 1938. The undis-

puted evidence showed that the oil mill started that day.

The evidence shows that he continued to work until November 16, 1938, at which time he ceased working because of an injured thumb. The evidence also shows that he joined the union on November 11, 1938 (Tr. p. 1200).

The complaint, paragraph 10 thereof, contained an allegation that the pay of L. E. Ely was reduced because of his union activities. The Trial Examiner found that this allegation was not sustained by the proof, but the testimony of Ely in that regard is material in considering his credibility.

Ely testified, positively, that he received 40c per hour when he was re-employed in October, 1938 (Tr. p. 1192, p. 1220), that he worked for five days as press helper and then substituted for a sick pressman for two weeks (Tr. pp. 1192, 1193), and that he received 40c per hour as pressman (Tr. p. 1220). He stated that he then resumed his job as press helper and he testified that during the week of November 12, 1938 his pay was reduced to 35c per hour, that he discovered that fact when he received his pay check for that week, and that he received only one check at the rate of 35c per hour (Tr. p. 1193, p. 1232, p. 1220).

Even when Ely was shown his time cards he insisted that he was receiving 40c per hour when he first went back to work (Tr. p. 1225), and that he knew how much he was paid (Tr. p. 1226). He said he kept a record of his time and handed it to Gordon

Hammond (Tr. p. 1227) and that his check for the last week he worked was not based upon the 35c per hour basis.

Also he insisted that he left work on November 14, 1938. Even when he was shown his time cards (Tr. p. 1233), he denied working November 15th or 16th (Tr. p. 1233, p. 1234).

The testimony of Gordon Hammond (Tr. p. 2507 to p. 2523) and the records (Boswell's Exhibits 9(a) to 9 (d), inclusive) showed conclusively that Ely started work on October 24, that he worked one day as press helper and was paid 35c per hour, that he worked seven days as pressman and received 40c per hour, after which he resumed his job as press helper on November 3rd and was again paid 35c per hour for that day and for the two following weeks. The Examiner found substantially in accordance with these facts. Gordon Hammond's testimony and the records also show conclusively that Ely worked up until November 16 with only two hours credited to him on November 16, because that is the day he left as a result of an injured thumb.

Ely sustained an injury to his thumb about November 5 or 6, 1938 (Tr. pp. 1199, 1240) as a result of which he left work on November 16, 1938 (Tr. pp. 1198, 1199). He testified that he received compensation insurance payments for two days at some time after he left his work (Tr. p. 1241), and the evidence shows, by Ely's own admission, that he never applied for work again at the Boswell Company (Tr. p. 1206).

On November 28, 1938, Ely was still absent from the plant with his injury, and the gin upon which he was working (Gin No. 4) had shut down on November 26, 1938. Since Ely was not at the plant, a registered letter was sent to him (Board's Exhibit No. 9), informing him of the fact that the job upon which he had been working was completed and that his employment was terminated. The evidence shows conclusively that he was laid off because of lack of work, and this is in full accord with his employment and lay-offs in prior years since his entire employment had been merely the performance of seasonal work and odd jobs.

No evidence was introduced which showed or tended to show that the management of the Boswell Company ever had any knowledge of Ely's union affiliations.

The following portion of Finding No. 44, to-wit:

"Ely has not been recalled to his work by the respondent even though he has fully recovered from his injury"

is entirely unsupported by any competent and credible evidence. There is no evidence in the record to show that there was any agreement on the part of the Boswell Company to recall Ely to work at any time.

There is no evidence in the record to show that Ely recovered from his injury or when he recovered, except hearsay and incompetent testimony regarding statements made by Ely's doctor to Ely, which testimony was erroneously introduced over the ob-

jections of respondents. Respondents duly interposed objections to the questions calling for said testimony, upon the ground that said questions called for hearsay and incompetent evidence, and the Trial Examiner erroneously overruled said objections and permitted the introduction of said testimony to which ruling respondents duly excepted, (Tr. p. 1209, lines 7 to 16; p. 1210, lines 10 to 12; p. 1210, lines 24 to 25). Respondents also moved to strike said testimony from the record, which motion was erroneously denied by the Trial Examiner to which ruling respondents duly excepted, (Tr. p. 1210, lines 1 to 6).

The respondents, at the time of the hearing, also objected to the introduction of testimony by L. E. Ely regarding his alleged conversation, about November 14, 1938, with Dr. Edmonds, relative to his injury, on the ground that it was incompetent, irrelevant, immaterial and hearsay. The Trial Examiner overruled the objection and an exception was taken thereto. (Tr. p. 1198). Respondents, and each of them, hereby except to such ruling upon the grounds above stated, which were urged in support of the objection.

The respondents, at the time of the hearing, also objected to the introduction of testimony by L. E. Ely, regarding his alleged report to the Hammond boys, about November 14, 1938, regarding his injury and the statements the doctor had made to him, on the ground that it was incompetent, irrelevant and immaterial, had no bearing on the issues in the case

and did not involve discrimination against anyone for having joined the union. This objection was overruled by the Trial Examiner and an exception was taken thereto (Tr. p. 1198). Respondents, and each of them hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The following portion of Finding No. 44, to-wit:

“The respondent * * * on cross-examination admitted that the usual practice of the respondent in cases of lay-offs has been, and was at the time of the hearing, that the individual employees laid off would be advised before they left the plant that they would be notified when needed. Ely was never notified to return to work”

is contrary to and unsupported by the evidence. There is no evidence in the record to support such statement regarding the usual practice of respondent and, in fact, Ely himself testified that before his lay-off in November, 1938, he had at times gone to the plant in person and applied for work (Tr. p. 1211).

He also testified that when he returned from Texas in October, 1938, he applied to Gordon Hammond for work (Tr. p. 1249).

The portion of Finding No. 44 relating to an alleged conversation between L. E. Ely and Tom Hammond is based solely upon hearsay and incompetent testimony which was erroneously introduced over the objections of respondents. Respondents duly interposed objections to the question calling for said testimony upon the ground that said questions called

for hearsay and incompetent testimony, and the Trial Examiner erroneously overruled said objections (Tr. p. 1194, lines 10 to 17, p. 1195, lines 11 to 12; p. 1195, line 21 to p. 1196, line 1), and respondents duly excepted to such rulings. Respondents, and each of them, hereby except to all of such rulings.

The following portion of Finding No. 45, page 25, to-wit:

“In fact, never before had such a letter been sent out to a laid-off employee”

is wholly unsupported by and contrary to the evidence.

The following portion of Finding No. 45, to-wit:

“However, the undersigned finds that Ely’s discharge became effective on November 26, 1938, and that he was refused re-employment by respondent because of his membership and union activities in Local 21798”

is entirely unwarranted and unsupported by the competent and credible evidence and contrary to the evidence, as above set forth. There was no evidence that Ely at any time applied for work after November 14, 1938, (Tr. p. 1206) and there was no evidence that the Boswell Company had work available for him at any time after November 26, 1938.

Respondents, and each of them, hereby specify the foregoing as Exception No. 61.

Exception No. 62.

Respondents, and each of them, hereby except to Finding No. 46, page 26 of the Intermediate Report,

upon the ground that said Finding is an incomplete and inaccurate statement of the matters therein referred to, and respondents hereby except to the portions of said Finding hereinafter designated, upon the ground that they are contrary to and unsupported by the credible evidence, and upon the ground that they are based solely upon hearsay and incompetent evidence erroneously introduced over the objections of respondents.

Winslow testified on direct examination that he first started to work for the Company in September, 1935, as a hay cutter at thirty cents an hour, and that thereafter he worked for the Company off and on until November, 1938, and that during the course of such employment he did the following different types of work: worked in the cattle corrals, seed house, oil mill, warehouse, and outside work (Tr. p. 1042), and that when he last worked in 1938 he was receiving forty cents an hour (Tr. p. 1043). He testified that up until 1938 he did not have any lay-offs of more than one month in extent, but when the mill shut down in March, 1938, he was laid off for about a month, then he went back to work and chopped weeds for about a couple of weeks, but only worked part time during the summer of 1938, probably a week on and a week off (Tr. p. 1043), and he did not start to work steadily again until the gin started about the latter part of September, 1938. When the gin started he worked outside the gin feeding suction for about two weeks, and was then laid off for five days, and started work in the oil mill chasing lint,

and continued on this last mentioned job until the oil mill closed and he was laid off November 15, 1938, (Tr. p. 1044). On cross examination he admitted he had done "a little bit of everything" (Tr. p. 1089). He testified that he was not initiated into the Union until November 16, 1938, and that he never attended any union meetings until that date. (Tr. pp. 1054, 1083).

The evidence shows that Winslow has never applied for work since his lay-off on November 15, 1938, (Tr. p. 1086).

The portion of said Finding wherein it is stated that in September, 1938, Winslow was "recalled" to work is contrary to the evidence. The testimony of Winslow in this regard was that he started to work for the Company when the gin started about the latter part of September, 1938. (Tr. p. 1044).

The portion of said Finding No. 46 relating to an alleged conversation between Tom Hammond and Winslow is based solely upon hearsay and incompetent testimony, which was erroneously introduced over the objection of respondents. Respondents, and each of them, duly interposed objections to the questions calling for said testimony upon the ground that said questions called for hearsay and incompetent evidence. The Trial Examiner erroneously overruled said objections, and respondents duly excepted thereto. (Tr. p. 1080, lines 12 to 14; p. 1080, lines 4 to 7). Respondents, and each of them, hereby except to such rulings.

The foregoing testimony which was erroneously

introduced related to an alleged conversation on November 13, 1938, in which Winslow claimed to have told Tom Hammond that he had joined the Union. The evidence, as above stated, was that Winslow was not initiated into the Union until November 16, 1938, and that he had not attended any Union meetings until that date, which was after he was laid off. (Tr. pp. 1054, 1083).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 62.

Exception No. 63.

Respondents, and each of them, hereby except to Finding No. 47, page 26 of the Intermediate Report, upon the ground that said Finding is unsupported by any competent and credible evidence, and upon the ground that it is based solely upon hearsay and incompetent evidence erroneously introduced over the objections of respondents, and upon the ground that said Finding is irrelevant to the issues of this case.

The Respondents, at the time of the hearing, objected to the introduction of testimony by Walter Winslow, regarding each of the alleged conversations with Tom Hammond on November 15, 1938, referred to in said Finding, upon the ground that such conversations were hearsay and not binding on any of the respondents, and on the further ground that there was no authorization shown for Tom Hammond to speak for the Company. Each of these objections was overruled by the Trial Examiner, and an exception taken thereto (Tr. p. 1045-9). Respondents,

and each of them, hereby except to such rulings upon the grounds above stated which were urged in support of their objections.

The portion of said Finding wherein it is stated that Tom Hammond was foreman of the gin department is contrary to the evidence, as has been above pointed out. No evidence was introduced showing, or tending to show, any authority having been conferred by respondents, or any of them, upon Tom Hammond to act or speak for or on behalf of any of the respondents or that Tom Hammond had any such authority.

The evidence shows that the shut-down of the mill on November 15, 1938, was a normal shut down due to shortage of cotton seed for crushing, and was not in anywise due to the Union or any of its activities.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 63.

Exception No. 64.

Respondents, and each of them, hereby except to Finding No. 48, pages 26 and 27 of the Intermediate Report, upon the ground that said Finding is based solely upon hearsay and incompetent testimony which is not binding upon any of the respondents and which was erroneously introduced over the objections of respondents, and upon the ground that said Finding is irrelevant to the issues of this case.

The respondents, at the time of the hearing, objected to the introduction of testimony by Winslow, regarding his alleged conversation with Joe Hammond on the evening of November 15, 1938, referred

to in said Finding, upon the ground that such conversation was hearsay and not binding on any of the respondents. This objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (Tr. 1050-1). The respondents, and each of them, hereby except to such ruling upon the grounds above stated, which were urged in support of the objection.

The Respondents, and each of them, specify all of the foregoing as Exception No. 64.

Exception No. 65.

Respondents, and each of them, hereby except to Finding No. 49, page 27 of the Intermediate Report, upon the ground that said Finding is an incomplete and inaccurate statement of the evidence referred to therein.

Boyd L. Ely was first employed by the Company about July 22 or 24, 1936, as a hay cutter at 30c per hour. He worked at this job until about the latter part of February, 1937, when he was transferred to the mill and, shortly before such transfer, his pay was raised to 35c an hour. He worked in the mill, until the latter part of May, 1937, and then he quit and took a job in the grain harvest, because it looked like there wouldn't be too much work at the plant. He worked at this job in the grain harvest for about sixty or seventy days (Tr. pp. 1155-6, 1174-5). He then came back and saw Gordon Hammond about a job, but did not start back to work for the Company until September, 1937. He then worked sewing sacks until about March 24, 1938, during which time he

received 40c an hour. He then left or was laid off and was again re-employed about the first part of April, 1938. (Tr. p. 1157). This time he was given a job running pumps out in the lake until sometime in May, when he returned to the plant and sewed sacks for a couple of days. (Tr. p. 1158). In May he left the company again and worked in the harvest and was again re-employed by the company about July, 1938 (Tr. p. 1174, p. 1158). At that time he was put to work sewing sacks for a short time, during which time he was paid 40c per hour. He was then transferred to the lint room and his pay was reduced to 35c per hour for the reason that the job paid less (Tr. pp. 1172, 1173). He was laid off about September 28, 1938, (Tr. p. 1172).

Boyd Ely joined the union September 5, 1938, (Tr. p. 1177).

After Ely was laid off in September, Prior, as union representative, held a conference with Gordon Hammond to discuss the re-employment of Boyd Ely and others who had been laid off (Tr. pp. 88, 2557 to 2559).

After the foregoing conferences, Ely was re-employed about October 15, 1938, and at that time his pay was raised from 35c to 45c per hour (Tr. p. 1173). Ely testified that he knew of this conference which Prior held with Gordon Hammond and that he understood that his re-employment was the result thereof (Tr. p. 1176).

When Ely was re-employed in October he was put to work sewing sacks and continued doing that work at the increased rate of pay until he was laid off on the night of November 14, 1938 (Tr. p. 1174).

Boyd Ely has never applied for work since November 15, 1938. (Tr. p. 1171).

The evidence, and Boyd L. Ely's employment record, conclusively show that he was merely a seasonal employee engaged in the performance of seasonal work from time to time, and that the termination of his employment on November 15, 1938, was due solely and entirely to the close of the oil mill on that date and the lack of further employment; that the oil mill was closed on that date because of the shortage of seed to process and that the closing thereof was a normal event.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 65.

Exception No. 66.

Respondents, and each of them, hereby except to Finding No. 50, page 27 of the Intermediate Report, upon the ground that it is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, upon the ground that said Finding is irrelevant to the issues of this case, and upon the further ground that the evidence shows that Tom Hammond had no authority to speak for or in any wise bind the Company with respect to any of the matters mentioned in the alleged conversation referred to in said finding, if in fact there was any such conversation.

The respondents, at the time of the hearing, objected to the introduction of testimony by Boyd L. Ely, regarding his alleged conversation with Butcher and White in July, 1938, referred to in said Finding,

upon the ground that it was hearsay and not binding upon any of the respondents. This objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (Tr. p. 1160). Respondents and each of them hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The respondents, at the time of the hearing, also objected to the introduction of testimony by Boyd L. Ely regarding his alleged conversation with Tom Hammond in July, 1938, referred to in said Finding, upon the ground it was hearsay. This objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (Tr. p. 1162). Respondents, and each of them, hereby except to such ruling upon the grounds above stated, which were urged in support of the objection.

The undisputed evidence shows that subsequent to the alleged conversations respecting the Union referred to in said Finding Ely was in fact re-employed by the Company about the middle of October, 1938, at an increased wage. (Tr. p. 1173).

In spite of Ely's testimony regarding certain alleged conversations, which was erroneously admitted in evidence, the unreliability of his testimony is indicated by the following:

He was asked on cross-examination if he attended the union meeting on November 19, 1938, at which the boycott was declared against the Company, and stated "I think I did." He admitted that he had been taking part in the boycott and had also been

on the picket line (Tr. pp. 1177-1178). When asked to state what was said and done at the meeting at which the boycott was declared, he could not remember. (Tr. p. 1182).

The Respondents, and each of them, specify all of the foregoing as Exception No. 66.

Exception No. 67.

Respondents, and each of them, hereby except to Finding No. 51, page 27 of the Intermediate Report, upon the ground that it is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, upon the ground that said Finding is irrelevant to the issues of this case, and upon the ground that there was no evidence that Clyde Sitton was authorized to speak for or in any wise bind any of the respondents with respect to any of the matters mentioned in the alleged conversation referred to in said finding. On the contrary the evidence showed without dispute that Sitton was merely a fellow employee and had no authority whatever to speak for the Company with respect to any of said matters, if in fact the alleged conversation was had.

The respondents, at the time of the hearing, objected to the introduction of testimony by Boyd L. Ely, regarding his alleged conversation with Clyde Sitton, in October, 1938, referred to in said Finding, upon the ground of hearsay, also that it was incompetent, irrelevant, and immaterial, no authority having been shown or established from Boswell Company to Mr. Sitton to speak for it with regard to

any of the matters under investigation in the proceeding. This objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (Tr. p. 1163). Respondents, and each of them, hereby except to such ruling upon the grounds above stated, which were urged in support of the objection.

The respondents, and each of them, specify all of the foregoing as Exception No. 67.

Exception No. 68.

Respondents, and each of them, hereby except to Finding No. 52, page 27 of the Intermediate Report, upon the ground that it is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, upon the ground that said Finding is irrelevant to the issues of this case, and upon the ground that no authority was shown or established from any of the respondents to Joe Hammond to speak for them, or any of them, with regard to any of the matters involved in this proceeding.

The respondents, at the time of the hearing, objected to the introduction of testimony by Boyd L. Ely, regarding his alleged conversation with Joe Hammond, on November 14, 1938, referred to in said Finding, upon the grounds that it was incompetent, irrelevant, immaterial and hearsay. The objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (Tr. p. 1159). Respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The respondents, and each of them, specify all the foregoing as Exception No. 68.

Exception No. 69.

Respondents, and each of them, hereby except to Finding No. 53, pages 27 and 28 of the Intermediate Report, upon the ground that said Finding and the conclusions of the Examiner stated therein are unsupported by and are contrary to the evidence and upon the ground that said Finding incompletely and inaccurately states the testimony in the respects hereinafter specified.

The evidence shows without dispute that neither Boyd Ely nor Walter Winslow was locked out of his employment and that his employment was not terminated by reason of his membership in the union or by reason of his union activities. In fact, Winslow himself testified that he was not initiated into the Union until November 16, 1938, and that he had never attended a Union meeting prior to that time (Tr. pp. 1054 and 1083).

The undisputed evidence shows that the 1938-1939 season was very short due to shortage of cotton to gin and the shortage of seed to crush in the mill, and that there was a consequent shortage of employment. This fact was recognized by all employees. The oil mill operated only periodically as there was seed available to be crushed and as market conditions and demand for oil and by-products of the seed justified the operation of the mill.

The undisputed evidence shows that the total tonnage of seed received at the mill for crushing from

the 1938-9 season was only 5,668 tons, as against 23,716 tons in the preceding season (Tr. pp. 2544-5).

The undisputed evidence also shows that the oil mill did not start on the crushing of the 1938 seed until October 24, 1938, and that it closed November 15, 1938 (Tr. 2551).

During the period of over six months which had elapsed at the time of the hearing in this case since the mill had been closed down in November, the evidence showed that the mill had operated only fourteen days in all. These operations took place in three short, sporadic runs and the mill was only operated on these occasions because of hot seed or a shortage of feed (Tr. pp. 2551, 2552, corrected pp. 2599, 2600).

The evidence also shows that at the time the mill was closed several of the non-union employees were laid off, as well as Winslow and Boyd Ely (Tr. p. 1097-1098). Winslow admitted this.

The undisputed evidence also shows that a few days prior to the opening of the oil mill on October 24, 1938, Gordon Hammond, at the direction of Louis Robinson, general manager of the plant, circulated a list among the oil mill employees asking them to signify their preference for the opening of the mill and their preference between a twelve-hour shift and an eight-hour shift (Boswell's Exhibit No. 8). It was stated in the letter attached to and made a part of said list that there would be a very short crush that season by reason of the cotton shortage and that the management of the company had no particular preference as to when the seed was crushed, and, in fact, there was no necessity for crushing the same at that

time. It is clearly shown by this letter that the company was willing to open the mill solely for the purpose of affording additional employment for its men and that in order to prolong such employment as much as possible to was willing, if the men so desired, to operate on an eight-hour shift. This letter, together with the list, was presented to the oil mill employees and was signed by them and they unanimously indicated a preference for a twelve-hour shift. Among those who signed this list were Winslow and Boyd Ely.

When Gordon Hammond presented this list to Winslow he explained to Winslow that they had only a few days milling to do and the company desired to know if the boys wanted to work twelve hours or eight hours and Winslow said he would rather work twelve hours (Tr. p. 2619).

Boyd Ely testified that he knew that the season was short (Tr. p. 1178), that Gordon Hammond told him it was immaterial to the company whether they worked eight or twelve hours (Tr. p. 1186), and that Ely signed for the twelve-hour shift voluntarily (Tr. p. 1186).

The evidence shows that as a result of this preference on the part of the employees, the crushing of the cotton seed then on hand was commenced October 24, 1938 and was completed November 15, 1938, on which last mentioned date the mill closed, and Winslow and Ely were laid off, solely because of lack of any further work for them to do.

The evidence also shows that Winslow and Ely did not, nor did either of them, apply for work at any

time after they were laid off on November 15, 1938. (Tr. p. 2636). They both admitted this to be a fact (Tr. pp. 1086; 1171).

The evidence also shows that it would have been physically impossible for the Boswell Company to have retained in its employ all of the persons who had previously worked for it, and that it was impossible to keep them working after the cotton and seed which were available had been exhausted.

The conclusion of the Trial Examiner in said Finding that Winslow and Boyd Ely were not laid off because of lack of cotton is unsupported and unjustified by the evidence.

The portion of said Finding referring to certain employees which, it is stated, were new employees, is an inaccurate and incomplete statement of the facts. In this respect the undisputed evidence shows as follows:

Douglas Caffell was first employed by the Boswell Company in September, 1938, was a cowboy who worked at the Reden Ranch, which was leased and operated by the company as a cattle ranch. He worked regularly as a cowboy and had never worked at the company's Corcoran plant (Tr. p. 2661, p. 2778). Furthermore, the statement in said Finding that he was paid \$75.00 per week is incorrect. His salary, as shown by Board's Exhibit No. 3, was a monthly salary of \$75.00 per month.

Al Chestnut never worked at the Boswell plant at any time and he was not an employee of the

Boswell Company. He was an employee of Peterson Farms Company. In the latter part of the year 1938 the Boswell Company contracted to pump the water off the land in Lovelace Reclamation District in which Peterson Farms Company is located. According to the terms of this contract the reclamation district was to furnish the men to supervise the operation of the pumps and Al Chestnut was one of the men furnished by the district. However, the district did not have any compensation insurance, so Al Chestnut was carried on the Boswell Company's payroll to keep him covered by compensation insurance and settlement was made therefor upon the completion of the contract (Tr. p. 2450).

Lee Chestnut was also carried on the company's payroll at the same time and under the same circumstances as Al Chestnut and he likewise was never employed by the Boswell Company and never worked at the Corcoran plant (Tr. p. 2451).

Contrary to the statement in said Finding, Andrew Clark had previously worked for the company, commencing in September, 1937, and was originally employed as a carpenter (Tr. p. 2656, Boswell's Exhibit No. 23 (c)).

The statement in said Finding that "other new employees" were taken on by the respondent during the last half of 1938 and the first half of 1939, is inaccurate and misleading. The persons whose names were raised in this regard were the following:

Ygnacio Galvan—The evidence shows that he had worked at the plant for about ten or eleven years prior to November 18, 1938 (Tr. pgs. 2652, 2666). Furthermore, the evidence showed that sometime after September 2, 1938 he was solicited by Andrade and signed up for the Union (Tr. p. 1127). He continued to work after November 18, 1938 when work was available.

Peter Galvan—The evidence shows that he worked for the company for a period of six or seven years before November 18, 1938 (Tr. p. 2655). The evidence also shows that he was one of the charter members of Prior's union (Board's Exhibit No. 4). He continued working after November 18, 1938, when work was available.

Lawrence Galvan—The evidence shows that he had been employed by the Boswell Company for a period of five or six years prior to November 18, 1938 (Tr. pgs. 2654, 2655). The evidence also shows that he signed up for membership in Prior's union (Tr. p. 112). He continued working after November 18, 1938, when work was available.

V. C. Galvan—The evidence shows that he had worked for the Boswell Company for a period of about two years prior to November 18, 1938 (Tr. p. 2655).

M. S. Escabedo—The evidence shows that he had been employed by the Boswell Company for three or four years prior to November 18, 1938

(Tr. pp. 2655, 2656). The evidence also shows that he was one of the charter members of Prior's union (Board's Exhibit No. 4). He continued to work after November 18, 1938, when work was available.

H. M. Smith—The evidence shows that he had previously been employed, commencing in September, 1937 (Tr. pp. 2656, 2657, Boswell's Exhibit No. 23 (b).)

Joseph Melton—The evidence shows he had also worked for the company prior to November 18, 1938, and since October 1, 1938 (Tr. pp. 2657, 2658).

Fred Mathews—The evidence shows he had likewise been employed by the company prior to November 18, 1938, and since May 13, 1938 (Tr. p. 2659, Board's Exhibit No. 3).

Waldon Bunker—The evidence shows that he was what is known as a "pick-up cowpuncher or cowboy", that he was also employed from time to time, as his services were needed, as a cowboy at the Wreden Ranch, and that he never worked at the Boswell Company's plant at Corcoran (Tr. pgs. 2659, 2778).

H. A. Champane—The evidence shows that he was a welder who was employed in the blacksmith shop in March, 1939 (Tr. p. 2661), that his work was of a specialized nature and that none of the complaining union employees was capable of performing it (Tr. p. 2666).

Charles A. Crye—The evidence shows that he never worked at the Corcoran plant but worked

for the Malga Company on the Chamberlin Ranch, which ranch is owned by the Boswell Company and is located a number of miles from Corcoran (Tr. p. 2662).

John Watson—The evidence shows he was never employed at the Corcoran plant but worked on the Chamberlin Ranch (Tr. p. 2662).

Harry Rickman—The evidence shows he was never employed at the Corcoran plant subsequent to November 18, 1938, but since about March 11, 1939, he was employed to drive a bulldozer on the levee in Reclamation District No. 749, which is situated in the Tulare Lake area some distance from Corcoran (Tr. p. 2665).

Vernon M. Rood—The evidence shows that he was first employed by the Boswell Company in August of 1935 (Boswell's Exhibit No. 23 (a).)

The portion of said Finding No. 53 wherein it is stated that there was no proof that Ely and Winslow could not have done the type of work performed by these new employees purports to shift the burden of proof upon respondents and is contrary to law. On the contrary, no evidence was introduced showing any specific qualifications of any of the complaining union men to do any specialized type of work.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 69.
Exception No. 70.

Respondents and each of them hereby except to Findings Nos. 54 and 55, and each of them, upon the grounds that the portions of said findings herein-

after designated are contrary to, and unsupported by, the evidence, are based solely upon hearsay and incompetent evidence erroneously introduced over the objections of respondents, and are incomplete and inaccurate statements of the evidence.

Stephen J. Griffin was first employed by the Boswell Company in August, 1932. At that time he hauled hay, helped feed cattle, and did different types of work off and on until 1936 (Tr. pp. 1286 and 1287). In May, 1936, he bought a hay bailer and, contrary to the implication in Finding No. 54, he was not in the employ of the Boswell Company during the time he operated the hay baler. He baled hay on contract and was paid at a fixed rate per bale. He baled hay on contract for the Boswell Company as well as others. When he was baling for the Boswell Company, the work was done on one of the Boswell ranches (Tr. pp. 1287, 1342 and 1343). He baled hay for three seasons and was not in the employ of the Boswell Company during that time (Tr. p. 1287). He ceased baling hay in July, 1938, and testified that about six weeks later he was employed by the Boswell Company (Tr. p. 1289).

He testified that when he started work in August or September, 1938, he did numerous jobs, some of which were cleaning, feeding suction, sewing cotton seed, and baling seed (Tr. p. 1290).

Griffin testified positively, both on direct and cross-examination, that he worked continuously from the time he was employed in August, 1938, until November 17, 1938 (Tr. p. 1291, p. 1327), and he testified

positively that he was not laid off at any time after the first week in August, 1938, until November 17, 1938 (Tr. p. 1328). He was shown Board's Exhibit No. 3 which consisted of the Social Security records kept by the Boswell Company for all employees, and which records showed the periods during which employees worked and the amount of pay they received. Counsel for the Board during the hearing had previously made the statement for the record that the Board had not attempted to contest the accuracy of the records contained in Board's Exhibit No. 3 (Tr. p. 934). Griffin's Social Security record showed that no wage payments were made to him between the week ending August 11, 1938, and the week ending October 13, 1938. After being shown this record he was asked if he was not laid off from August 11, 1938, until on or about October 7, 1938 (Tr. 1328). Despite this incontrovertible evidence, he testified he thought there was a mistake in the books (Tr. p. 1330), and, so far as he could remember, he worked continuously during this period of time, and that during said period of time he was sewing cotton seed cake and cleaning up around the gin, and feeding suction, and hauling cotton seed into the warehouse. He also testified positively that he was paid continuously at the rate of forty cents per hour during the period from August, 1938, on through to November 17, 1938, and that he worked ten or eleven hours each day during that time (Tr. p. 1331).

He also testified positively that he was not even laid off several days at a time during that period

(Tr. p. 1341) and that he did not receive any checks for a week's work as low as \$24.80.

In addition to the record contained in Board's Exhibit No. 3, Gordon Hammond, the plant superintendent employed by the Boswell Company, identified and explained Griffin's time cards for the period above mentioned and explained in detail the nature of the work done by him and demonstrated conclusively that the records contained in Board's Exhibit No. 3 were correct (Tr. pp. 2525 to 2533). Gordon Hammond's testimony and the time cards (Tr. p. 2526; Boswell's Exhibits Nos. 22 (a) to 22 (g), inclusive) showed that Griffin worked only two days during the week ending August 5, 1938, and, contrary to the statement in Finding No. 54, showed that he was paid at the rate of 35c per hour during that week. The records and testimony further conclusively show that Griffin was not again employed by the Boswell Company from that time until the week ending October 13, 1938 (Tr. p. 2527).

Griffin was asked if during his last week of work at the plant, that is, the week ending November 17, 1938, his work did not consist chiefly of hauling planting seed, and he testified that it did not, that his work consisted chiefly of sewing planting seed (Tr. p. 1331). He was also asked if there was some work done by him during that week which consisted merely of cleaning up around the plant, and he testified he didn't know as there was that week. He was also asked if he knew how many hours a day he worked during his last

week of employment, and he testified he was sure it was around 12 hours a day (Tr. p. 1332). The foregoing testimony was directly contrary to his time card for the week ending November 17, 1938 (Boswell's Exhibit No. 22 (G),) which showed, first, that the principal work performed by him during said week was hauling planting seed, and that he did not do any work of sewing planting seed during said week; and, second, that during part of three days during said week he was engaged in clean-up work around the yard; and, third, that there was only one day during said week in which he worked 12 hours, and the rest of the time during said week he worked only from 4 to 11 hours a day, which fact showed conclusively that the work on which he was engaged was running out.

When Griffin was asked by Board's counsel whether he became a member of any labor organization, he could not remember either the name or the number of Prior's local Union, of which he became a member (Tr. p. 1293).

The foregoing instances are illustrative of the complete unreliability and lack of credibility of Griffin's entire testimony.

The following portion of Finding No. 54, to-wit:

"During the afternoon of November 17, 1938, Tom Hammond went to the cotton gin where Griffin was sewing sacks and asked Griffin in the presence of Paul R. Morris and Horace Hastings if he had joined the union. Griffin told Hammond that he had been a member for about two weeks,"

is based solely upon hearsay and incompetent evidence erroneously introduced over the objection of respondents and is not supported by any competent and credible evidence. Respondents duly objected to the introduction of such testimony upon the ground of hearsay and upon the further ground that it was incompetent, irrelevant, and immaterial, there being no authority established from the Boswell Company to Mr. Tom Hammond to bind it with respect to any of the matters under investigation in this proceeding (Tr. p. 1294). The objection was erroneously overruled by the Trial Examiner, and an exception was taken to such ruling and the respondents, and each of them, hereby except to such ruling, upon the grounds above stated.

Furthermore, said above quoted portion of said Finding is an incorrect statement of said testimony, which was erroneously introduced (Tr. p. 1295).

It is significant to note that although Griffin claimed he told Tom Hammond in the alleged conversation above mentioned "that he had been a member for about 2 weeks," he testified that he did not join the union until about November 15 or 16, 1938 (Tr. p. 1293).

The following portion of Finding No. 54, to-wit:

"Hammond walked directly to the back of the warehouse and met Gordon T. Hammond where they stood and talked for about 15 or 20 minutes,"

and the whole of Finding No. 55 are unsupported by any competent and credible evidence.

The statement in Finding No. 55 that "Griffin has

not been recalled to work by the respondents since November 17, 1938" is contrary to the undisputed evidence that Griffin has never applied for work from the Boswell Company since November 17, 1938 (Tr. p. 1349, p. 2636).

Gordon Hammond testified that Griffin was laid off because there was no work for him to do, and the records and other undisputed testimony shows that to be the case. Griffin testified as above mentioned that his principal work was sewing planting seed (Tr. p. 1331). The testimony of Gordon Hammond (Tr. p. 2631) and Boswell's Exhibit No. 22(g) show that Griffin, during the last week of his work, was doing odd jobs and hauling planting seed. The record shows that only 1007 tons of planting seed were set aside that year as compared with 1537 tons the previous year (Tr. p. 2555). On November 17, 1938, the undisputed evidence shows that they had finished picking the cotton set aside for planting seed (Tr. p. 2555). Also, on that date, 879.4 tons of planting seed out of the 1007 tons which were set aside, had been sacked and stored in the warehouse. The evidence showed that practically all of the planting seed which was set aside had been sacked and hauled (Tr. p. 2633). The fact that there was a very short cotton season that year is shown by the undisputed records and testimony of all witnesses. Even many of the union employees testified that they realized that to be true. In fact, at about 9 o'clock A.M. on that date, Nov. 17, 1938, Farr, Prior, Martin and Spear called on Gordon Hammond and discussed the fact that the cotton was running out and suggested that the work

be spread among the employees to prevent any more layoffs than necessary. Prior testified that they knew a number of employees had been laid off and it was understood that there were probably going to be more laid off (Tr. p. 465).

Gordon Hammond testified that he notified Griffin about 7 o'clock on the morning of November 17, 1938, that he would be laid off. Gordon Hammond stated that this conversation occurred at the gin "where they were hauling and sacking planting seed" (Tr. p. 2712). It is stated in Finding No. 55, based upon the testimony of Griffin alone, that he was not notified of his layoff until the afternoon of November 17th. Prior testified that there had been a number of men laid off at some time before their meeting at 9 o'clock on the morning of November 17th (Tr. p. 465). Gordon Hammond also testified that during this meeting at 9:00 A.M. he told the union representatives that he had already laid off three men that morning (Tr. p. 2563). He testified that the three men he referred to were Griffin, Johnston and Eller (Tr. p. 2562). Although Prior, Farr, Martin and Spear were all called as witnesses, none of them denied that Gordon Hammond had made such a statement to them during that meeting.

Griffin's testimony is replete with contradictions and indefinite statements on the matters concerning which he should be familiar, as well as untrue testimony regarding the length of his employment as above set forth. Since the above mentioned portions of Findings No. 54 and 55 are based entirely upon

Griffin's uncorroborated testimony, it is submitted that it is not supported by any competent or substantial evidence.

The evidence also shows without dispute that the major portion of the work performed by Griffin during the last six weeks of his employment immediately prior to November 17, 1938, was the sacking and hauling of planting seed and clean-up work in connection therewith (Boswell's Exhibit No. 22 and Tr. p. 1331). The undisputed evidence also shows that immediately prior to November 17, 1938, Johnston, Eller, Morris, and Hastings also worked on the planting seed. The evidence shows that both Griffin and Johnston were laid off November 17, 1938, solely because of the natural termination of the seasonal job of sacking, hauling and storing the planting seed, which job had been practically completed, and had been entirely completed so far as it was possible to complete the same to that date, and that there was no further work for them, as well as some of the others who had been engaged on that job to do, and that neither of said men were laid off because of their union activities. In fact, Gordon Hammond testified that he did not know at the time of laying them off on November 17, 1938, that they belonged to the Union (Tr. 2720). Furthermore, the evidence shows that Morris, who, so far as disclosed by the evidence, was not a union member, or in anywise engaged in union activities and who had been engaged on the planting seed job, was also laid off a few days after November 17, 1938 (Tr. 2722).

The respondents, and each of them, specify all the foregoing as Exception No. 70.

Exception No. 71.

Respondents, and each of them, hereby except to Finding No. 56, page 29 of the Intermediate Report, upon the ground that certain portions of said Finding are contrary to and unsupported by the evidence, and on the ground that said Finding does not fully or accurately state the evidence regarding the matters therein mentioned.

The evidence shows that when Johnston started work in 1937 it was at the start of the 1937-38 ginning season (Tr. p. 231).

The undisputed evidence shows that Johnston was re-employed by the Boswell Company about the time the mill started running in the fall of 1938 (Tr. p. 239), which would be about October 24, 1938 (Tr. pp. 2551, 2552, corrections pp. 2599, 2600). From that time until the time of his lay-off on November 17, 1938 just following the closing of the mill, Johnston was merely performing odd jobs. According to his own testimony, upon his return to work he worked one day in the branding pen, then about seven days as press helper, then about two weeks sewing and sacking planting seed and thereafter as bale hauler (Tr. pp. 225, 226). This testimony was also confirmed by Gordon Hammond (Tr. p. 2632).

He also admitted that although his leg was sufficiently recovered that he could have gone back to work as early as the middle of June 1938, (Tr. p. 238) he did not apply for work at any time after his

leg was injured the latter part of January 1938 until about October 10, 1938, when he did apply for work (Tr. p. 239), and that this application for work was made shortly before the start of the oil mill (Tr. p. 239). This application for work was made to Gordon Hammond. Johnston also admitted upon recross-examination that he received workmen's compensation insurance for the time he was unable to work by reason of his injury. Also that sometime in February 1939 he had an operation on his leg, which was taken care of by the Workmen's Compensation Insurance Company, and that since this operation he had also been receiving and was at the time of the hearing receiving Compensation payments (Tr. p. 254-5).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 71.

Exception No. 72.

Respondents, and each of them, hereby except to Finding No. 57, pages 29 and 30 of the Intermediate Report, upon the ground that certain portions thereof are contrary to and unsupported by any competent and credible evidence and misstate the evidence.

The statement in said Finding purporting to relate the testimony of Johnston that Gordon Hammond told Jonhston he was laid off on account of the weather and the shortage of the cotton crop is an incorrect statement. Johnston's testimony in this regard was that Gordon Hammond told him "on account of the water and the shortage of the cotton crop he would have to lay someone off * * *"

The portion of said Finding relating to said alleged conversation is not supported by the credible evidence as will hereinafter be discussed.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 72.

Exception No. 73.

Respondents, and each of them, hereby except to Finding No. 58, page 30 of the Intermediate Report, upon the ground that said Finding incorrectly states the evidence.

Gordon Hammond testified that on the morning of November 17, 1938, he notified both Johnston and Griffin "that there would be no more work for them after that day for a few days". He did not state "for a few weeks", as stated in said Finding (Tr. p. 2631).

Facts relating to the credibility of Griffin are set forth in Exception No. 70, and respondents hereby incorporate all portions of said Exception relating to Griffin.

Johnston testified at the hearing that he had never talked over the matters to which he testified with any members of the union before getting on the stand and that he had not discussed the case with anyone whomsoever before testifying (Tr. pp. 1705 to 1708).

Frank A. Mouritsen, Attorney for the Board, was later called as a witness and he testified that he had a signed statement by Mr. Johnston, which was taken by someone on the staff, prior to the time Johnston testified, and that he would say before Johnston testified he had discussed the case with him because that was his invariable practice.

Johnston also testified, in answer to a direct question, that he was not employed. In this regard, Mr. Mouritsen stated in his testimony that he had called Mr. Johnston out of order so that he could take employment elsewhere and that Johnston left after he testified and he thought he was employed in Hanford (Tr. p. 2352). Mr. Mouritsen later explained his answer and stated that he let Johnston go for the purpose of taking up employment, but he did not know whether Johnston was employed when he was testifying.

Respondents, and each of them, hereby specify, all the foregoing as Exception No. 73.

Exception No. 74.

Respondents, and each of them, hereby except to the conclusion of the Examiner in Finding No. 59 and to the entire Finding, with the exception of the first sentence thereof, upon the ground that said conclusion and said portion of said Finding are unsupported by, and contrary to, the evidence.

The undisputed evidence shows that neither Johnston nor Griffin ever at any time applied for work after they were laid off November 17, 1938. Each of them admitted this fact (Tr. p. 243, 1349 and 2636).

It is stated in said Finding, among other things, that it has been the policy of the Company to notify men when they are to return to work. Such statement is not supported by any evidence *any*, on the contrary, the evidence clearly shows that the Company did not have, and has not at any time followed, such policy, but that it has been the policy

and practice for men desiring work to apply therefor to Gordon Hammond, at the plant, except on a very few occasions when the Company would look up a man and offer him employment because it had no experienced applicant for the job which was available.

Johnston, himself, testified that after his injury and layoff in February 1938, he applied for work again about October 10, 1938, or around the first of October (Tr. p. 239), and that such application was made to Gordon Hammond, plant superintendent (Tr. p. 240).

The evidence discloses no promise or agreement whatever on the part of Gordon Hammond to notify either Griffin or Johnston to return to work at the Boswell plant after they were laid off November 17.

The evidence further shows that on November 19 the union held a meeting and initiated a boycott against the Boswell Company (Tr. pp. 962, 963, 1349, 135, 1177), that Griffin attended the meeting when the boycott was declared (Tr. p. 1349), and that both Griffin and Johnston took an active part in said boycott.

The undisputed evidence shows that not only did neither of these men ever apply for work after November 17, 1938, but that on or about November 26, 1938, Prior, Spear and Martin called upon Gordon Hammond for the purpose of discussing the re-employment of these two men, as well as other union men. Mr. Hammond informed them that the Com-

pany would take any or all of the men back when it had work for them, beginning the next morning or any time they wanted to come back. The following day, Prior, Martin, and Hammond had a further discussion regarding the matter. Prior requested that all of the men be taken back in a body. Hammond told him they didn't have work for them and couldn't take them all back in a body (Tr. p. 2570-1). Prior then suggested that they all be taken back and put to work tearing down and restacking stacks of cake for two or three days. To which Hammond replied that the Company could not do that. Prior then stated that he would compel the Company to take them back and would tie up the cotton, oil, and cake where it couldn't move (Tr. p. 2572).

The evidence also shows that Prior, at a meeting held by him with Mr. Louis T. Robinson, on or about November 28, 1938, during which the matter of employing the union men was discussed, when informed by Mr. Robinson that some of the men would be put back to work from time to time as work was available, took the position that there was no use of discussing the matter further, unless all of the men were immediately put back to work (Tr. pp. 140, 2417).

The evidence affirmatively shows that neither Griffin nor Johnston were laid off on November 17, 1938, because of their union activities and membership, and that such lay-off was solely and entirely due to the termination, in its natural course, of the

jobs on which they had been employed, and to the lack of any further work for them to do (Tr. p. 1296-7). The evidence also shows that at the time Griffin and Johnston were laid off on November 17, 1938, Gordon Hammond did not even know they were members of the union (Tr. p. 2561), and so informed Prior at the meeting of November 17th with Prior, Martin, Farr, and Spear.

The respondents and each of them, specify the foregoing as Exception No. 74.

Exception No. 75.

Respondents, and each of them, hereby except to Finding No. 61, pages 30 and 31 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter designated are based entirely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents and that said Finding is contrary to the evidence and incomplete in the respects hereinafter specified.

The evidence shows that Spear was among those mentioned in said Finding who met with Gordon Hammond on the morning of November 17, 1938, (Tr. p. 954). The evidence also shows that Prior arrived at the Boswell plant after the plant was in operation and that at his request Gordon Hammond called Farr, Spear and Martin from their jobs to hold a conference (Tr. p. 343, p. 344). Prior testified that one of the primary purposes of the conference was to suggest a reduction in the hours per shift in order to avoid lay-offs. Prior said that

he told Gordon Hammond that they knew a number of men had been laid off and that others would be laid off because of the smaller acreage and scarcity of cotton that year (Tr. p. 465). Prior, Spear and Farr all suggested that the working day be reduced to eight hours so that everyone would get a little work, rather than some of them being laid off (Tr. pgs. 451, 346, 955 and 956). Prior called Gordon Hammond's attention to the fact that some plants operated on a three-day week in order to avoid lay-offs (Tr. p. 451). Prior also testified that they did not discuss the reinstatement of men who had been laid off (Tr. p. 463). They discussed the authority of Tom Hammond and Joe Hammond and Prior stated that he wanted "a clarification by someone in charge as to their exact status" (Tr. p. 467). Prior testified that Gordon Hammond informed them that neither Tom Hammond nor Joe Hammond had authority to hire or fire employees (Tr. p. 467). Prior asked Gordon Hammond if the men would be laid off if they came to union meetings and Gordon Hammond replied that they would not and that Prior could tell them if they wanted to go it was all right for them to go, and if they would rather ask him Gordon Hammond, he would tell them to do so, or they could ask Louis Robinson (Tr. p. 2561).

The respondents, at the time of the hearing, objected to the introduction of the testimony regarding the alleged conversation between Tom Hammond and Farr on November 17, 1938, upon the grounds

that it was hearsay, that such conversation was not binding on any of the respondents, and, in connection with the respondent Boswell Company, on the further ground that no authority had been shown from the Company to Mr. Hammond to speak for it with regard to the matters under investigation in the hearing. The objection was erroneously overruled by the Trial Examiner, and an exception was taken hereto (Tr. p. 271). After Farr was permitted to testify regarding his alleged conversation with Tom Hammond, over the objection of respondents, respondents moved to strike such testimony upon the same grounds urged against its introduction. The motion to strike was erroneously denied and the respondents excepted thereto (Tr. p. 273), and the respondents, and each of them, hereby except to the foregoing ruling on their objection and to the denial of the foregoing motion to strike, upon the grounds above stated which were urged at the time of the hearing.

The respondents, and each of them, specify all of the foregoing as Exception No. 75.

Exception No. 76.

Respondents, and each of them, hereby except to Finding No. 62, page 31 of the Intermediate Report, upon the ground that certain portions of said Finding, hereinafter designated, are based solely upon hearsay and incompetent evidence erroneously introduced over the objection of respondents and that said Finding is an inaccurate and incomplete statement of the evidence in the respects hereinafter mentioned.

The evidence shows that on November 17 the gins started at 7 A. M. (Tr. p. 959), but on the morning of the 18th Spear's gin was scheduled to start at 10 A.M. (Tr. pp. 560, 858). Spear testified that he assumed Gordon Hammond was acting upon the suggestion of the union committee to cut the hours and divide the work (Tr. p. 960).

The portions of said Finding relating to alleged conversations between Bill Robinson and Farr were based solely upon hearsay and incompetent testimony, which was erroneously introduced over the objection of respondents. The respondents, at the time of the hearing, objected to the introduction of the testimony regarding the alleged conversation between Bill Robinson and Farr referred to in said Finding, upon the ground that it was hearsay, was not binding upon any of the respondents, and, with respect to respondent Boswell Company, that no authority had been shown from the Company to Mr. Bill Robinson to speak for it with relation to any of the matters subject to this investigation. The objection was erroneously overruled and an exception was duly taken thereto (Tr. p. 276). The respondents, and each of them, hereby except to such ruling upon the grounds above stated.

The portion of said Finding wherein the Trial Examiner concludes that Bill Robinson is a supervisory employee is contrary to and unsupported by the competent and credible evidence. Respondents hereby restate and incorporate herein, with the same effect as if stated herein in full, Exception

No. 54. No evidence was introduced which showed, or tended to show, that respondents conferred any authority upon Bill Robinson to speak or act for or on behalf of any of the respondents in relation to any of the matters mentioned in said Finding. The evidence also affirmatively shows, without dispute, that Gordon Hammond, plant superintendent, was absent from the plant on November 18, 1938 between 8:30 A. M. and about 7 P. M. of said day; that he did not know before leaving the plant that morning that the employees of the company intended to meet and did not give any one permission, or authorize anyone, to shut down any of the gins or any of the machinery about the plant, or to leave their work during his absence, and that he first learned about the occurrences of November 18, 1938 upon his return to the plant about 7 o'clock that evening (Tr. p. 2567).

Respondents, and each of them, hereby specify the foregoing as Exception No. 76.

Exception No. 77.

Respondents, and each of them, hereby except to Findings Nos. 63 and 67, page 31 to 34 of the Intermediate Report, upon the ground that certain portions of said Findings hereinafter specified are based solely upon incompetent hearsay testimony erroneously introduced over the objection of respondents and are incomplete, contrary to and unsupported by the evidence.

In regard to the persons present at the gathering referred to in said Finding, Spear testified

that he did not see anyone in the group who was not an employee (Tr. p. 862).

The statement in Finding No. 63 that the three men therein mentioned "by pulling and pushing forced Spear" to the office is contrary to the evidence. Farr testified that no force was used (Tr. p. 332). Spear testified that no one struck him (Tr. p. 986), that he didn't think anyone pushed him (Tr. p. 869) and that they led him to the office (Tr. p. 986).

When they got in the office Martin testified that Rube Lloyd, Nichols and Bill Robinson were there, yet he also testified as follows:

"We just waited there for a long time, never did nobody with authority show up, and finally Mr. Robinson put his head out of the door
* * *".

Contrary to the statement in Finding No. 63, there is no evidence that Farr identified Yankee Roberson as among those who were present in the office.

As stated in Finding No. 63, Gordon Hammond was not at the plant that morning. The undisputed evidence shows that he had no knowledge of the events which occurred that day until he returned to the plant in the evening, and that he did not authorize the closing of the gins or any of the men to leave their jobs (Tr. p. 2567). The evidence is also uncontradicted that Louis Robinson did not know of the incident until the men came to his office. He testified that he was in his office with Ar-

mour, his assistant, and Batil, discussing Batil's business, when a swarm of men came into the office (Tr. p. 2148). Some one of the employees said they were not going to run the plant both union and non-union and that there was a big majority of non-union men and they wanted the union men discharged (Tr. p. 2155).

The portion of Finding No. 63 relating to the statement supposed to have been made by Louis T. Robinson to-wit: "I will be right out in a short while . . ." is contrary to the credible evidence. That portion of said Finding is taken from Farr's testimony but it is contrary to the testimony of every other witness.

Louis T. Robinson testified as follows:

"I told the men that they were too excited, and I wanted them to go back to work, both union and non-union, and after they cooled down I would come around and talk to them and see if we couldn't straighten the matter out". (Tr. pgs. 2148, 2156, 2472).

Spear testified that Louis Robinson

"told the men to go on back to work, that he would come down and straighten it out, straighten out the trouble" (Tr. p. 870).

Andrade testified that

"Mr. Robinson came to the door and he said something about going back to work, that he would be out and straighten the matter out" (Tr. p. 1112).

Martin, on his direct examination, testified that
“Mr. Robinson put his head out of the door
and told us to go back to work, he would be
around to straighten it out” (Tr. p. 537).

However, during the cross-examination of Martin
a recess was taken. Although no questions were asked
on cross-examination relating to the statement of
Mr. Robinson he was questioned again by counsel
for the Board regarding the statement, and he then
testified that Mr. Robinson said

“Go on back and go to work boys, I will be
around in a few minutes and straighten this
out” (Tr. p. 572).

In addition to the matters stated in said Find-
ings, the evidence showed that the morning of No-
vember 18, 1938, was the first time that any of the
union men had worn their union buttons on the job
(Tr. p. 857, p. 1002).

The portion of Finding No. 63 relating to an al-
leged conversation between Farr and Jack Ely is
based solely upon hearsay, which was erroneously
introduced over the objection of respondents.

The respondents, at the time of the hearing, ob-
jected to the introduction of testimony regarding
said alleged conversation upon the grounds that the
conversation was hearsay as to all respondents,
and specifically as to the respondent Boswell Com-
pany and that there had been no authority shown
from the Company to Mr. Ely to speak for it with
respect to any of the matters under investigation
in this proceeding. This objection, as well as a sub-

sequent objection to the same testimony was erroneously overruled by the Trial Examiner, and an exception was duly taken to each of said rulings (Tr. pp. 278-279). The respondents, and each of them, hereby except to said rulings and each thereof, upon the grounds above stated, which were urged in support of the objections.

The portion of said Finding No. 63 relating to certain statements alleged to have been made by Spear is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents.

The respondents, at the time of the hearing, objected to the introduction of testimony by Farr regarding said alleged statements made by Spear, on the grounds that such statements were not in any wise binding upon the respondents and were pure hearsay and self serving. This objection was erroneously overruled by the Trial Examiner and an exception was duly taken thereto (Tr. p. 280-1). Respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The portion of said Finding No. 63 relating to statements alleged to have been made by some unidentified person is based solely upon hearsay and incompetent testimony erroneously introduced into the record.

Respondents, at the time of the hearing, moved to strike Farr's testimony regarding said alleged statement made by some unidentified person in the

crowd, "Let's throw them out. The Company is behind us", upon the grounds that such statement was hearsay, was not binding upon the respondents, and there was no authority shown from the Company to any such person to make any such statement. This motion was erroneously denied by the Trial Examiner and an exception was duly taken to the denial of said motion (Tr. pp. 281-282). Respondents, and each of them, hereby except to the denial of said motion upon all of the grounds above stated which were urged in support of such motion.

The portion of Finding No. 67 relating to an alleged conversation between Spear and Todd is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents. The respondents, at the time of the hearing, objected to the introduction of the testimony by Spear regarding said alleged conversation upon the grounds that such conversation was, as to all respondents, hearsay and not binding on any of them, and that there was no authority shown for Mr. Todd to speak for any of the respondents. This objection was erroneously overruled and an exception thereto was duly taken (Tr. pp. 859-860). Respondents, and each of them, hereby except to the said ruling upon the grounds above stated which were urged in support of the objection.

No evidence was introduced showing, or tending to show, any authority conferred by respondents, or any of them, upon any of the persons mentioned in said Findings to act for or on behalf of any of the

respondents in regard to any of the matters therein stated.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 77.

Exception No. 78.

Respondents, and each of them, hereby except to Finding No. 64, pages 32 and 33 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter designated are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and are incomplete and contrary to and unsupported by the evidence.

No authority was established from respondents, or any of them, to Kelly Hammond, Burdine, Mitchell, Bill Robinson, Tom Hammond, or any other person therein mentioned or referred to, to speak or act for or on behalf of respondents, or any of them, with respect to any of the matters therein mentioned.

Contrary to the statement in said Finding, the evidence shows that Joe Hammond was not a foreman.

In addition to the matters therein stated, the testimony showed that Tom Hammond, Kelly Hammond, Joe Hammond, Bill Robinson, Burdine, Mitchell, and many others, were around the gins after all of the employees went back to work on the morning of *October 18, 1938*. In spite of this fact Spear testified as follows: "I sat down on the stairs. In fact I was stalling for time. I was

waiting for somebody to come around.” (Tr. p. 804). He testified further that he was waiting specifically for Louis Robinson to come around (Tr. p. 982).

Martin testified that he told Tom Hammond at that time, “If Mr. Hammond and Mr. Louie Robinson comes down here and says ‘Go home,’ all right, but until they do we won’t” (Tr. p. 540). He testified that when he mentioned Mr. Hammond he was referring to Gordon Hammond (Tr. p. 563).

Said Finding is misleading by reason of the fact that it fails to identify which “Robinson” is referred to in said Finding. There is no evidence in the record that Louis Robinson did any of the acts or made any of the statements mentioned in said Finding.

The portion of said Finding relating to an alleged conversation between Farr and Robinson, and also between Farr and Tom Hammond and other persons, is based solely upon hearsay erroneously introduced over the objection of respondents.

The respondents, at the time of the hearing, objected to any testimony by Farr regarding what was said by him and by certain other parties who were alleged to have been present after the men had left the office and returned to their jobs on the morning of November 18, 1938, upon the grounds that same was hearsay and not binding on any of the respondents, and particularly as far as respondent Boswell Company was concerned, that no authority whatsoever had been shown by the Company to any of

the individuals mentioned to make any statement at all for it, or on its behalf, with respect to the matters under investigation in this proceeding (Tr. p. 288). This objection was erroneously overruled by the Trial Examiner, and an exception was taken to such ruling (Tr. p. 289), and the respondents, and each of them, hereby except to such ruling upon all the grounds above stated.

The respondents, at the time of the hearing, moved to strike the testimony of Farr with respect to the alleged conversation between Tom Hammond and Farr, upon the grounds stated in support of the objection previously urged. This motion was also erroneously denied by the Trial Examiner, and an exception was taken to such denial (Tr. p. 289), and the respondents, and each of them, hereby except to the denial of said motion upon all the grounds above stated.

The respondents, at the time of the hearing, also objected to the introduction of the testimony by Farr regarding the alleged conversation between him and Bill Robinson, upon all the grounds above stated (Tr. p. 289). This objection was erroneously overruled by the Trial Examiner, and an exception was taken to such ruling (Tr. p. 290), and the respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The portion of said Finding relating to certain statements alleged to have been made by Bill Robinson incorrectly sets forth the testimony in that

regard, which was erroneously admitted as above stated. Farr testified, over the objection of respondents as aforesaid, that after Bill Robinson had made the statement referred to in said Finding, Wingo asked him the following:

“as a foreman will you tell us to go home”, and Bill Robinson said,

“No, not as a foreman, but that is my idea that you men had better go home”.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 78.

Exception No. 79.

Respondents, and each of them, hereby except to Finding No. 65, page 33 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence and upon the further ground that there was no authority established from respondents, or any of them, to Bill Robinson to bind respondents, or any of them with respect to any of the matters under investigation in this proceeding.

The evidence affirmatively establishes that Bill Robinson, in the discharge of his duties, had no authority whatsoever to hire or fire any employee, or to fix the terms or conditions of employment of any employee of respondent Boswell Company (Tr. p. 2391, p. 2398), and that the orders, if any, which were given by Bill Robinson to Farr, as mentioned in said Finding, were only such orders as were necessarily and properly given for the mechanical operation of the gin.

Respondents, and each of them, hereby restate and incorporate herein, with the same effect as if stated herein in full, Exception No. 54.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 79.

Exception No. 80.

Respondents, and each of them, hereby except to Finding No. 66, page 33 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter specified are contrary to and supported by any evidence and misstate the evidence, and upon the further ground that there was no authority established from respondents, or any of them, to Rube Lloyd, Yankee Roberson and Oscar W. Busby, or any, or either of them, to act or speak for or on behalf of respondents, or any of them, in relation to any of the matters involved in this proceeding.

The following portion of said Finding, to-wit:

“that Rube Lloyd, Yankee Roberson and Oscar W. Busby were among the group who went into Hammond’s office at the time Spear was dragged in there by the individuals above named”

is contrary to the evidence. Martin’s testimony in the above regard is that in addition to the three men who had brought Spear over to the office, the only men he could remember were Rube Lloyd, Mr. Nichols and Bill Robinson. He did not mention Yankee Roberson or Oscar W. Busby (Tr. p. 535).

There was no evidence whatever that Spear was dragged into the office, but, on the contrary, the undisputed evidence showed that he walked from the yard over to the house and that no force had been used upon him.

The portion of said Finding wherein the Trial Examiner finds that Busby is a supervisory employee of the respondent is contrary to and unsupported by the evidence. There is no substantial or competent evidence to support the above mentioned conclusion of the Trial Examiner which is based solely upon hearsay evidence, and, on the contrary, the evidence affirmatively establishes that Busby had no authority to hire or fire, or to fix or determine hours, wages or conditions of employment and that he was not a supervisory employee.

Respondents hereby restate and incorporate herein, with the same effect as if stated herein in full, Exception No. 54.

Martin, himself, testified that, after Spear and the other men got to the office, they just waited there for a long time; that nobody showed up with authority, and finally Mr. Robinson (referring to Louis T. Robinson, General Manager) put his head out of his office door and told them to go back to work, and he would be around to straighten it out (Tr. p. 536-7).

Respondents, and each of them, specify all of the foregoing as Exception No. 80.

Exception No. 81.

Respondents, and each of them, hereby except to Findings Nos. 68 and 69, page 34 of the Intermediate Report, upon the ground that certain portions whereof, hereinafter referred to are inaccurate, incomplete, contrary to and unsupported by the evidence.

The evidence affirmatively established that Louis Robinson instructed the men to return to work when they came to the office and the men did return to the gins. However, they remained at the gins only 10 or 15 minutes, and not exceeding 30 minutes, and then went to their homes without notifying Louis Robinson prior to their departure that they intended to leave or that the non-union employees had refused to work with them (Tr. p. 371). As a result, Louis Robinson was not afforded any opportunity to straighten the matter out before their departure.

The evidence also affirmatively establishes that the union men named in said Finding left the plant and went home of their own free will and accord without any instruction from Louis Robinson to that effect, and directly contrary to the previous instructions he had given them. Louis Robinson was the only person who was at the plant that day who was authorized to represent or speak for the company with respect to employment matters and the operations of the plant.

It is also clear that the meeting at 10 o'clock that morning before the men went to Louis Robinson's

office arose because of disagreements between the union employees and the non-union employees of the Boswell Company, and it is also clear that the Boswell Company was not in any way involved in those disputes. It is likewise clear that the same disputes influenced the union employees in their decision to leave the plant without obtaining the permission of Louis Robinson and directly contrary to his instructions. The record shows that the underlying, and only reason for the trouble which occurred at the plant that day during the absence of Gordon Hammond was the fact that a great majority of the employees were not interested in joining Prior's organization and were not in favor of the program proposed by the union men of prorating the work and reducing the hours worked to eight hours a day with a resultant decrease in earnings.

It is also affirmatively established by the undisputed evidence that neither Louis Robinson nor Gordon Hammond had any advance knowledge or information either that the employees intended to meet on the morning of November 18th, or that any disturbance was about to or might occur. (Tr. pp. 2145, 2567).

The evidence also shows that Louis Robinson and Gordon Hammond, who are the only men in authority at the plant, did not in any way sanction or approve the unauthorized action taken by the non-union employees (Tr. pp. 2484, 2701).

The portion of Finding No. 69 wherein it is stated that Louis Robinson did not keep his promise with

the employees is misleading and contrary to the evidence. Louis Robinson testified that he told the men to go back and start to work and cool down, but before he thought it was the proper time to go out to straighten out the trouble he heard that the union men had left the plant (Tr. p. 2472).

In addition to the matters stated in said Finding, the undisputed evidence shows that Farr's telephone call to Louis Robinson was between 11 and 11:30 A. M. (Tr. p. 2149) and that he told Louis Robinson what happened and told him that the union men had decided it was best to go home. (Tr. pp. 2150, 297). There was no evidence that Farr said the union men were "forced off the job" as stated in Finding No. 68.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 81.

Exception No. 82.

Respondents, and each of them, hereby except to Finding No. 70, pages 34 and 35 of the Intermediate Report, upon the ground that certain portions of said Findings hereinafter specified are contrary to and unsupported by the evidence and are inaccurate, incomplete and are based solely upon hearsay and incompetent evidence introduced over the objection of respondents.

Prior testified that when he telephoned Louis Robinson on the evening of November 18 regarding the previous occurrences at the plant that day, Louis Robinson stated that he knew very little about the incident, that the employees were hold-

ing a meeting that night, and he was going to wait until he had a report from them before he did or said anything. Prior testified that he told Mr. Robinson that he, Prior, felt the situation, if not already serious, would probably become serious and it was the responsibility of all parties to try to come to an understanding on the issues (Tr. p. 132).

The portion of said Finding relating to an alleged conversation between Farr, Martin and Prior is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents. Respondents duly interposed objections to the introduction of said testimony, upon the ground that it was hearsay and not substantial evidence required to support Findings in this proceeding. The trial examiner erroneously overruled said objections and permitted the introduction of such testimony, to which respondents, and each of them, duly excepted and do hereby except (Tr. pp. 129 and 130).

Respondents, and each of them, hereby specify all of the foregoing as Exception No. 82.

Exception No. 83.

Respondents, and each of them, hereby except to Finding No. 71, pages 35 and 36 of the Intermediate Report, upon the grounds that said Finding is an incomplete and inaccurate statement of the evidence in the respects hereinafter specified.

In addition to the statements contained in said Finding, Prior testified that at the conference of November 19 he told Mr. Robinson, among other

things, it would possibly be better for the company, the employees and everyone concerned to place a number of the employees at work moving stacks from one pile to another and then back where they came from rather than let a situation of that kind become large and cause a lot of misunderstandings and hard feelings and develop into serious proportions (Tr. p. 424). Prior testified that when he stated the situation might become more serious he meant that if these men were not placed back on the payroll and not protected it might become necessary to file charges with the National Labor Relations Board and appeal to organizations affiliated within the labor movement to help prosecute a boycott against the Boswell Company (Tr. p. 425, 426).

Prior also testified that Robinson stated at that meeting that there was a tense feeling on the part of the employees still working, and that he felt it was a situation that should be handled with utmost care, and that he didn't want to take any action without giving it very careful consideration and bring these employees back and possibly cause a further flare up in the plant (Tr. p. 442).

Contrary to the statements in said Finding, Prior testified that when he asked Louis Robinson how long it would be before he could give him an answer Louis Robinson said he would do the best he could (Tr. pp. 134, 135).

Spear testified that Louis Robinson didn't promise an answer at any definite time (Tr. p. 931), and

there is no evidence that Louis Robinson promised to call or give an answer before 12 o'clock. In addition to the matters therein stated, Louis Robinson testified that Prior asked for the earliest possible answer, and Robinson told him he couldn't hurry but would let him know as soon as he could (Tr. p. 2411). He testified that he didn't remember any specific time limit set by Prior (Tr. pp. 2411, 2412). Louis Robinson also testified, in addition to the matters stated in said Finding, that when he suggested that the union men talk with the rest of the employees they told him they didn't care to do that (Tr. p. 2410).

The fact that Louis Robinson told Prior, Martin and Spear that the men would be carried on the payroll until the matter was determined is also confirmed by the testimony of Gordon Hammond to the same effect (Tr. p. 2756, p. 2771). Although Prior testified that at the meeting of November 19 Louis Robinson did not say anything about continuing the men on the payroll (Tr. p. 414), the undisputed and uncontradicted evidence shows that all of the union men who left the plant following the incident of November 18 were subsequently carried on the payroll and were paid the same as though they had continued working on the jobs on which they were engaged on November 18 up to the time that such jobs terminated in their usual and ordinary course at the end of the ginning season (Board's Exhibit No. 3). The evidence shows that Joe Briley, one of the union men in question,

returned to work a few days after November 18th and has continued to work for the company when work was available.

The portion of said Finding wherein it is stated that the union voted to place a boycott against the company on November 18, 1938 is contrary to the evidence. The evidence shows that the boycott was voted on November 19, 1938 (Tr. p. 135, p. 963).

Respondents and each of them, hereby specify the foregoing an Exception No. 83.

Exception No. 85.

Respondents, and each of them, hereby except to Finding No. 72, page 36 of the Intermediate Report, upon the ground that it is unsupported by and contrary to the evidence, and is an incompetent and inaccurate statement of the testimony relating to the matters referred to in said Finding.

The statements contained in said Finding are merely the statements made by Prior on Direct Examination. Upon Cross Examination, Prior at first testified (Tr. 494) that during the course of his conversation with Mr. Boswell in Los Angeles on November 25, Mr. Boswell stated that the notice which had been prepared by, and posted in, the plant at Corcoran, at the request of Mr. Larson, of the National Labor Relations Board, a day or so previously (Boswell's Exhibit No. 13), stated the policy of the Company. The evidence shows that the notice referred to reads as follows:

“Notice to Employees.

This company will not through its proper representatives or otherwise, restrain, coerce, intimidate or interfere with our employees right to self organization as guaranteed by the National Labor Relations Act.

Furthermore this company will not discriminate with regard to hire or tenure of employment because of affiliations with the American Federation of Labor or any other bona fide labor organization.

This notice will be posted for a period of fifteen days.”

However, later in his cross examination, Prior testified that Mr. Boswell could have made this statement, that he was not positive whether he did or not (tr. 509).

Prior also admitted on cross examination that the charge filed by him against the Boswell Company with the National Labor Relations Board on November 21, 1938, was also read over by, and discussed with, Mr. Boswell during the above mentioned conference (tr. 506-7).

It is stated in the above mentioned Finding that the conversation between J. G. Boswell and Prior was not denied by the respondent. However, the Board itself introduced in evidence a letter dated November 25, 1938, which was written by Fred G. Sherrill, who was present at the conference between Prior and Mr. Boswell, to J. G. Boswell Company at Corcoran (Board's Exhibit No. 26). The letter

was written the same day of the conference while the entire matter was fresh in mind, and fully and accurately sets forth the discussion which was had at said conference.

Said letter reads as follows:

(Copy)

“J. G. Boswell Company
Los Angeles, California
November 25, 1938.

J. G. Boswell Company
Corcoran
California

Attention of Mr. L. T. Robinson
Mr. G. L. Hammond

Gentlemen:

LABOR MATTERS

Mr. Prior, Secretary and Treasurer of the California State Council of Soap and Edible Oil Workers, called on Colonel Boswell this afternoon.

Colonel Boswell told Prior that the notice to employees now posted on the bulletin board at Corcoran, covered his position and that the of the company. He also told Prior that those employees who had been put off the property, as outlined in your letter of November 18, would (provided there was work for them) be paid during the period of their absence in accordance with the policy of the company under the National Labor Relations Act, as outlined in the notice.

Colonel Boswell also told Prior that the responsible individuals in the management of the Corcoran Plant were Mr. L. T. Robinson and Mr. Gordon L. Hammond, and that while in the conduct of the business and the running of the plant certain authority might be delegated as between these two individuals and others on the company's payroll, that he, Colonel Boswell was not acquainted with the detail in this respect.

Prior stated that he had a better understanding of the company's business following his talk with Colonel Boswell, at which point he was told that the published notice constituted all there was to the company's position, and anything which Prior may have inferred from the conversation which went beyond this notice was not in keeping with the position of the company, that we felt the notice was clearly in keeping with the National Labor Relations Act, and it was the intention of the company to conduct his affairs strictly in accordance with the law.

Yours very truly,
(Sgd.) FRED G. SHERRILL,
Treasurer"

Respondents, and each of them, hereby specify all the foregoing as Exception No. 85.

Exception No. 86.

Respondents, and each of them, hereby except to Findings Nos. 73 and 74, page 37 of the Inter-

mediate Report, upon the ground that certain portions hereinafter specified are contrary to and unsupported by the evidence, incomplete and do not fully state the evidence.

Contrary to the statements in said Findings, Prior testified that the conference with Gordon Hammond therein referred to took place on November 27, 1938 (Tr. p. 137). Furthermore, Prior testified, and Board's Exhibit No. 26, establishes that on the afternoon of November 25, 1938 Prior was in Los Angeles where he conferred with Mr. J. G. Boswell (Tr. p. 136).

Prior testified that when he met Gordon Hammond on November 27 he requested a conference with Louis Robinson on the following day (Tr. p. 138).

It is stated in said Finding that the meeting between Prior, Martin and Louis Robinson was held on November 26, whereas Prior testified that it occurred on November 28 (Tr. pgs. 138, 139).

Prior's testimony on this matter was as follows: He told Mr. Robinson that he and Martin wanted to discuss the matter of these men being replaced on the payroll, that they felt they had been discriminated against and "if someone in authority" stated that there was to be no arguments on the job that as far as the other employees were concerned there would be no opposition. Mr. Robinson wanted to know who the men were that Prior referred to that should be placed back on the payroll and Prior started to name the men. Prior

named Spear, and according to Prior, Robinson said that as there was work from time to time that they could use Spear on, that there had been times since November 18 that he would have worked a few days. Prior then named Martin and Prior stated that Mr. Robinson laid his pencil on the desk and said

“Well, Mr. Martin’s machine is just shut down and we can not use Mr. Martin. We might at some time in the future, but we don’t have any idea when.”

Prior then testified that he stated,

“I told Mr. Robinson if that was the attitude in regard to Mr. Martin, that we could not have some misunderstanding as to him, as well as all the rest of them, there was no need of naming any further, and the conference ended” (Tr. p. 140).

Upon cross-examination Prior, when asked concerning this matter, testified as follows: Mr. Robinson asked him just who he had reference to in regard to the re-employment of the union members. Prior said he would name them and he named Spear, and Mr. Robinson said,

“Well, there has been some work we could have used Mr. Spear on since he has been off, and we can use him from time to time as there is work for him”,

and Mr. Robinson wrote Spear’s name on a pad (Tr.

p. 495). Prior then called the name of Martin and Mr. Robinson laid his pencil down and said,

“Now, there is no work. The operation that Mr. Martin was on has definitely shut down, and there is no work for Mr. Martin” (Tr. p. 495),

that they might at some time later use him but that it was indefinite (Tr. p. 496). Prior then stated,

“Well, Mr. Robinson, unless all of these employees are going to be given consideration—they have all been given the same treatment. They are all evicted—and unless all of these employees are going to be given the same consideration, there is no need of discussing the matter further. We are wasting your time, and we are wasting ours.”

This ended the conference according to Prior's testimony (Tr. p. 496).

Prior also testified regarding the above conference as follows:

“Q. Well, the fact is, isn't it, Mr. Prior, that when you were told by Mr. Robinson that Martin's particular job had become exhausted or that that operation had given out, you then told Mr. Robinson that if Martin wasn't taken back, then nobody would come back to work?

A. It is possible that I made that statement.

Q. Isn't that the substance of what you did say?

A. I wouldn't say that was the substance. It is possible I made that statement.” (Tr. p. 501).

Louis Robinson testified as follows regarding the above discussion:

“The first man he named was Lonnie Spear. I wrote his name down and told him that we might find some work for Lonnie, that his gin would probably run a few more days.

I don’t know if Martin was the next man he named, but if he named anybody between Spear and Martin, I don’t remember it.

Then he named R. K. Martin. I told him that Mr. Martin’s gin had closed down and we didn’t have any work for him at that time.

He said, ‘Well, if you don’t have any work for Martin, there is no use to talk any further.’

Q. What happened, if anything?

A. He walked out.” (Tr. p. 2417)

The following portion of Finding 74, to-wit:

“Gordon L. Hammond in giving his version of the meeting of November 19 and the meeting of November 26, which he claims was on the 28th, stated that he told Prior that the respondent would take back all of the union men”

is not supported by and is contrary to the evidence. The only version given by Gordon Hammond with respect to the meeting of November 19th was his testimony that

“Mr. Robinson told them that they would be carried on the payroll on the morning of the 19th until this matter was settled, or something to that effect, I don’t remember just what.” (Tr. p. 2756).

He also testified as follows:

“Well, in a conversation with Mr. Prior and Mr. Farr, Mr. Spear, and Mr. Martin, on the morning of November 19, Mr. Spear was in the office talking to Mr. Robinson about those men going back to work. He told Mr. Prior that the men were to be carried on the payroll until the matter was settled . . . That is all that I remember. There was quite a long conversation about other things. I don't remember.” (Tr. pp. 2770, 2771).

The evidence is clear that Gordon Hammond was not present at the conference between Louis Robinson, Martin and Prior which took place on or about November 28th. (Tr. p. 2742). Consequently he gave no testimony relating to what occurred at that meeting and the statement to the contrary in Finding No. 74 is contrary to the evidence.

With respect to Gordon Hammond's meeting with Prior during the latter part of November, 1938, Gordon Hammond testified that it took place about “the 28th or somewhere along in there”. He did not know the date. (Tr. p. 2752). He testified, however, that two days before the conference between Prior, Martin and Louis Robinson that he had a conversation with Prior, Spear and Martin in the afternoon of that day. He stated that Prior wanted to know something about putting the men back to work who had been off since the difficulty of November 18th. Also Prior wanted to know if the notice Mr. Larson recommended had been put up and Hammond told him

that it had. (Tr. pp. 2569, 2570). Hammond testified that when Prior spoke about taking some of the men back to work Hammond stated:

“I told him we would take any of them, or all of them back when we had work for all of them to work, beginning next morning or any time they wanted to come back.”

Prior also asked to see Louis Robinson but Robinson was not there that afternoon. (Tr. p. 2570).

The following morning, (which was the day before the conference between Prior, Martin and Robinson), Gordon Hammond was again called upon by Prior and Martin and again discussed the matter of putting some of the union men back to work. He testified as follows:

“... he (Prior), asked me that morning if we would take them all back in a body. I told him we didn't have work for them, we couldn't take them all in a body.” (Tr. p. 2571).

Gordon Hammond testified further that Prior on that occasion asked him if the company couldn't take them and put them in the warehouse “tearing down stacks of cake and restacking them for two or three days”. Hammond replied that he couldn't do that. Prior then stated that if the company wouldn't take them back that he would make them take the men back as he had been up against propositions like that before. He stated that they would tie up all the cotton, oil and cake in the Boswell Company and he could tell Hammond that they had tied up as much

as \$1,000,000.00 worth of property and he understood that Boswell had that much at times; that they would tie it up so it couldn't move. Prior then asked Gordon Hammond to make an appointment with Louis Robinson for him the following day, which was done. (Tr. pp. 2572, 2573).

The foregoing conversations as related by Gordon Hammond were not denied.

Contrary to the statement in Finding No. 74 the evidence fails to show that Louis Robinson ever told Prior that the company would take back "all of the union men except Martin". The testimony is this regard has been hereinabove set forth.

As shown by the evidence above discussed it was clearly established that Prior was insisting on November 28th that all of the union members who had left work on November 18th be immediately reinstated regardless of the fact that there was not sufficient work then available for all of these men. Prior denied that he instructed the complaining union men not to apply for work but the evidence shows that none of them did apply for work after that date. Even though the undisputed evidence shows that Louis Robinson offered to reemploy Spear during the conference of November 28th, Prior testified that Spear never applied for work to his knowledge. (Tr. p. 504). Spear testified that he didn't know about this offer to reemploy him until he heard Prior's testimony at the hearing. (Tr. p. 926).

The evidence shows without dispute or contradiction that at the time of Prior's conference with Louis

Robinson on November 28th jobs were not available at the plant of the Boswell Company for all of the union members unless the company laid off some of the men who were on the job at that time. (Tr. p. 2422). Martin had proveiously worked on gin No. 4. Gin No. 4 closed on November 26th (Tr. p. 2549) and the other gins were about to close. The evidence is undisputed that there was a very short cotton crop in 1938 and Prior's testimony regarding his conference with Gordon Hammond on November 17, 1938 shows that he and his union members were fully aware of that fact. He testified as follows concerning that conference:

“Mr. Spear stated that the membership of the union was not asking for any increase in pay at that time, that they were all familiar with the fact that there was a shorter cotton crop that year and familiar with the conditions, and the primary interest was in trying to provide as much employment for the season for as many employees as possible.” (Tr. p. 126).

The evidence shows conclusively that the management of the Boswell Company was willing to take back such of the union men as it had work for from time to time, but Prior repeatedly insisted that all of them be taken back immediately when he knew as shown by the evidence that the ginning season was practically over and the oil mill was not in operation and consequently knew that work was not available for all of his union men.

The undisputed evidence also shows that at the

time of the meeting of about November 28th between Prior, Martin and Louis Robinson, Prior knew that at least some of the union men who had left the plant on November 18 had continued to receive pay from the Boswell Company, even though they were not working. He testified that he knew this fact because he had procured photostatic copies of some of the checks. (Tr. pp. 497, 498).

The following portion of Finding No. 74, to-wit:

“It is indeed strange that on that same day, November 28th, Robinson wrote and mailed registered letters to R. K. Martin, L. E. Ely and George Andrade advising each of them that their employment with the respondent terminated on November 26th at 5 p. m.”,

is entirely unwarranted by the evidence. As above pointed out, the evidence shows that the company was perfectly willing to take back all of the union men from time to time as it had work available for them but Prior insisted that they be taken in a body. The persons to whom those letters were sent were persons whose particular jobs had been completed. The evidence shows without dispute that the sole and only reason for sending those men registered letters was that Louis Robinson had agreed to continue them on the payroll until the jobs on which they worked had been completed and when those jobs ran out they were not available at the plant to notify them of that fact. Louis Robinson testified that he thought it wise to mail them letters so that there would be no misunderstanding about the amount of

pay they might have coming and he thought it wise to register the letters so as to be positive that they had been received. (Tr. pp. 2491, 2492).

The statement in said Finding No. 74 that Robinson advised Prior on November 19th and November 28th "that the union men would be taken back to work" is contrary to the evidence and misleading. On November 19th Robinson told them that they could go back to work. At that time there was work for them to do. As shown by the evidence above set forth, both he and Gordon Hammond told Prior on November 28th that they would take the men back as they had work available for them.

The portion of said Finding No. 74 wherein it is stated that Hammond and Robinson were "deceitfully misadvising Prior and his committee" is contrary to the evidence and entirely unwarranted as shown by the evidence as set forth herein.

The following portion of said Finding No. 74, to-wit:

"The letters show conclusively that the said members of the said Local had been definitely discharged from their employment with respondent November 28, 1938"

is misleading. As pointed out above, the letters were sent to notify the men that their jobs had been completed. In other words, the effect of the letters was just the same as any layoff except the men were in the favorable position of drawing pay without working and it was necessary to notify them when their pay stopped because they weren't there to be notified in person.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 86.

Exception No. 87.

The respondents, and each of them, hereby except to Finding No. 75, page 38 of the Intermediate Report, upon the ground that the statements therein contained do not fully or accurately state the evidence with respect to the matters therein mentioned, and particularly in that it is not shown or stated therein that the conference had by Prior with Louis T. Robinson on January 18, 1939, was the result of a previous conference held on January 17, 1939, in which Mr. Howard, an investigator for the National Labor Relations Board participated.

The evidence shows that on January 17, 1938, a meeting was held at the Company's office between Prior, Spear, Farr, Martin, Andrade, Johnston, and Winslow, representing the Union, and Mr. Louis Robinson and Mr. William Boswell, representing the Boswell Company. In addition thereto, there were present at the meeting Mr. Maurice Howard, field examiner of the National Labor Relations Board, 21st Region, and Mr. Bill Robinson and Mr. Kelley Hammond, who were employees of the Boswell Company (Tr. p. 141 and 2423).

Louis Robinson testified that Mr. Howard was carrying on an investigation in the plant and on January 17, 1939, was discussing it with him. Howard contended that after Louis Robinson had told the union men to go back to work on November 18 that they were bodily ejected from the job. Louis Robin-

son denied this and Howard offered to prove that he was correct. Howard called in the various employees and questioned them. He asked them, particularly Spear, if any one had hurt them or cursed them or ordered them off the property and Spear and the other men said none of those things had occurred. Howard then asked the men if they were afraid that something might happen and some of them said they were. Howard stated to Robinson that the men left the property because they feared violence and that it was the same thing as being bodily ejected. Robinson testified that Spear then described the incident of November 18th before the men came to the office. After that Howard said if they had done that to him he would have shot all three of the men and that Lonnie Spear would have been fully justified in shooting all three (Tr. pp. 2424 to 2426).

Mr. Robinson also testified that during the course of the meeting with Prior, Howard, and the others on January 17, 1939, he stated, in effect, that no foreman or any one else was authorized by the Company to make any statement regarding any employee's membership or non-membership in any union, and that no employee's position would be affected because of membership in any union (Tr. p. 2438); that he made this statement because Mr. Howard discussed the matter with him and he explained the Company's position (Tr. p. 2440). Mr. Robinson also testified that he had made substantially the same statement to Mr. Prior during the course of the conversation which took place about September 1, 1938, and also

in the conversation which took place on the morning of November 19, (Tr. p. 2440).

Mr. Prior's version of this meeting was as follows: He testified the union representatives stated that on November 18, Bill Robinson and Kelley Hammond had shut down some of the machinery in the gins at the time of the eviction of the union employees (Tr. 141). Bill Robinson and Kelley Hammond admitted they did shut down some of the machinery. Mr. Louis T. Robinson stated that neither Mr. Bill Robinson nor Mr. Kelley Hammond were authorized to cut the power off the machinery, and that no one had been authorized on behalf of the Company to interfere with the operations of the plant. Prior testified that was all that he recalled regarding what was said at that conference (Tr. p. 142-3).

Mr. Robinson testified that on the morning of January 18, 1939, Mr. Howard again returned to the office, and they had a further conversation. No one else was present (Tr. 2437-8). In this second conversation with Mr. Howard the latter stated that he wanted the Company to discharge all the non-union employees who had taken part in the events of around 10:00 o'clock of the morning of November 18, and wanted the Company to hire union men in their places, and wanted the Employees' Association dissolved. Mr. Robinson told him there was no labor dispute between the management and its employees; that any dispute that existed was between two groups of employees; that the Company was not going to fire anybody that was giving satisfactory service on the job; and that the company had nothing to do with the organization of the Employees' Association

and would make no efforts or attempts of any kind to dissolve it. Mr. Howard then stated that if Mr. Robinson did not do that, he would call the Labor Board hearing and Mr. Robinson would get a lot worse. Mr. Howard took a little pamphlet out of his pocket that had a number of decisions in it and pointed out some of the decisions that had been found at labor board hearings. Mr. Robinson told Mr. Howard that he thought none of those cases were similar to the Company's position and he would stand just where he told him (Tr. p. 2441). Mr. Howard then said, "All right. Then you will get the board hearing." (Tr. p. 2442).

Mr. Robinson's testimony with respect to the foregoing conversations with Mr. Howard were not denied, and his version of said meetings, particularly that of January 17, 1939, is substantiated by the testimony of Walter Winslow (Tr. 1083-5), George Andrade (Tr. 1132-7), and L. A. Spear (Tr. 966).

Regarding his conference with Prior on January 18, 1939, referred to in said Finding, Louis Robinson testified that Prior called on the afternoon of that day and said he was calling on Robinson at the suggestion of Mr. Howard and he wanted to know if there had been any change in the company's position after Mr. Howard's visit. Robinson stated that he told Prior, "No, Mr. Howard's visit had not changed the company's position at all" and that that was all of the conversation (Tr. p. 2445).

Mr. Robinson's testimony with respect to the two conferences held with Mr. Howard on January 17th and 18th, 1939, respectively, in which he outlined

the Boswell Company's labor policy, is also substantiated by the fact that on January 20, 1939, (which was only three days after the meeting of January 17, 1939) Prior personally inserted a notice in a newspaper published in Corcoran, California, known as the Corcoran News (Tr. p. 432, and Boswell Exhibit No. 3), which said notice read as follows:

“The Corcoran News
January 20, 1939.

Attention

J. G. Boswell Co. Employees

“Many employees of the J. G. Boswell Company have stated that foremen of the company have told them that membership in the American Federation of Labor would affect their employment with the company.

“Mr. Louis Robinson, general manager of the Corcoran plant, stated in the presence of the following men who attended a meeting in his office January 17, 1939:

“Maurice Howard, Field Examiner of the National Labor Relations Board

Wm. Boswell, of the company

E. F. Prior, Sec.-Trea., California State Council of Soap and Edible Oil Workers

Wm. Robinson, employee of company

Kelly Hammond, employee of company

L. A. Spear

Elgin Ely

O. L. Farr

George Andrade

R. K. Martin

Walter Winslow

W. R. Johnston

Officers and members of the Cotton Products and
Mill Workers Union No. 21798:

“NO FOREMAN OR ANYONE ELSE IS
AUTHORIZED TO MAKE ANY STATE-
MENT REGARDING ANY EMPLOYEE'S
MEMBERSHIP OR NON-MEMBERSHIP
IN ANY UNION BY THE COMPANY AND
THAT NO EMPLOYEE'S POSITION
WOULD BE AFFECTED BECAUSE OF
MEMBERSHIP IN ANY UNION.”

After the declaration of company policy by
Mr. Robinson, no employee of the company
should be afraid to attend a meeting for the pur-
pose of learning the history and gains made by
organization in their industry—they really owe
it to themselves to learn everything possible
about these new developments.

A MEETING WILL BE HELD IN THE
CORCORAN AMERICAN LEGION HALL

January 23, 1939, at 8:00 P.M.

for the purpose of discussing labor problems
with the employees of this industry.

COTTON PRODUCTS & GRAIN MILL
WORKERS UNION No. 21798

R. K. MARTIN, Secretary
CALIFORNIA STATE COUNCIL OF
SOAP AND EDIBLE OIL WORKERS
E. F. PRIOR, Secty-Treas.”

The evidence shows without dispute that the con-
ference which Prior had with Louis T. Robinson on

January 18, 1938, as mentioned in said Finding No. 75, was prompted by and was the direct result of the conference above mentioned which had taken place between Mr. Robinson, Mr. Prior, Mr. Howard, and others on January 17, 1939, and the one between Mr. Robinson and Mr. Howard on the morning of January 18, 1939.

The respondents, and each of them, specify all of the foregoing as Exception No. 87.

Exception No. 88.

The respondents, and each of them, hereby except to the whole of Finding No. 76, page 38 of the Intermediate Report, on the ground that said Finding is contrary to, and is not supported by, the evidence, and upon the further ground that there was no authority established from the respondent Boswell Company, or any other respondent, to any of the persons who participated in the alleged eviction to speak or act for, or on behalf of, any of the respondents with respect to any of the matters involved in this proceeding.

The evidence affirmatively shows that the alleged eviction of these men was not the result of any acts or action on the part of the respondent Boswell Company, or any of the other respondents, and was not authorized, sanctioned, or approved by said or any respondent.

The evidence further establishes that none of the men named in said Finding were ever refused re-employment, but, on the contrary, none of said men, with the exception of Joe Briley, ever applied for

employment after November 18, 1938. The evidence also shows without dispute that Joe Briley, a member of Prior's union, applied for work and was reemployed a few days after November 18, 1938, and thereafter continued to work off and on as work was available (Board's Exhibit No. 3).

The evidence also shows without dispute that all of said men, with the exception of Joe Briley who continued to work, were, subsequent to November 18, 1938, carried on the pay roll, and, although they did not do any further work, were each paid the amounts they would have received had they continued on their respective jobs up to the time that said jobs terminated in their natural course.

The evidence also shows that although the Company informed Mr. Prior, as representative of these men, that they could come back to work at any time there was work available, Prior refused to permit any of them to return to work unless they were all put back in a body.

The undisputed evidence shows that Prior and members of his union knew and recognized on November 17, 1938, that the Company was then laying off certain men, and was about to close down one or more of the gins and the work looked as though it was just about to run out if the Company continued working the customary number of hours (Prior's testimony, Tr. p. 447-8).

The evidence also shows that when the seasonal operation of ginning was practically completed in November 1938, there was not sufficient work available at the plant for all of Prior's men unless the

Company should lay off some of the other employees who were working on November 18, 1938, and who had continued to work (Tr. 2422).

The following evidence bears upon the matters referred to in said Finding, but was entirely omitted from the Intermediate Report:

Upon cross-examination, Martin testified that, after waiting a matter of fifteen or twenty minutes, he and some of the other men took their coats and went home, after they went over and had a conference with Mr. Spear, but they did not go back in to see Mr. Louis Robinson before they left the plant (Tr. 564).

On the following day, to wit, November 19, 1938, Gordon Hammond, at the request of General Manager Louis T. Robinson, thoroughly investigated the matter for the purpose of ascertaining the cause of the trouble and, on said date, made a written report of his findings to Mr. Louis T. Robinson. Said report was introduced in evidence by the Board. (Board's Exhibit No. 25). Said exhibit reads as follows:

“November 19, 1938

“Memo to: Mr. L. T. Robinson

“From: Mr. G. L. Hammond

“I have made quite a lot of inquiries into the trouble the employees had yesterday while I was away. There seems to have been a misunderstanding between some of the employees as to who would supervise the work and working hours at the plant, myself or the employees that

had affiliated themselves with the A. F. L. Union.

“It is my understanding that they had decided to get together at 10 o’clock when L. A. Spear came to work and see what it was all about, as he was President of the local Union. In trying to determine why and what the cause of the trouble was and of the rushing of L. A. Spear out of the gate and into the office, my understanding is that O. L. Farr, R. K. Martin and some of the others that possibly had joined the Union were passing the word along that they were giving them their last chance to get in the Union or they would lose their jobs, but were passing the buck to L. A. Spear and he wasn’t there yet. That seems to be the reason of their closing down the gin after 10 o’clock.

“I find that Lonnie Spear did get on the bale wagon and tell them that they were going to prorate the work and work eight hours only, and if they wanted to work here they would have to join their Union.

“Then W. C. Nichols got up some place where he could ask Spear outright if he understood him to say that they were taking charge of all the work and Spear answered yes. Then Nichols asked Spear if he meant that for the boys to work here they would have to join the Union, and Lonnie answered that he meant that very thing.

“Then someone in the crowd said “Let’s throw him out”, and they proceeded to rush him out of the gate and into the office.

“I am sure this would never have happened if I had been here, because everything was ok when I left about 8:30. I am very positive nothing like that would ever have happened anyway if Lonnie hadn’t told them they were going to prorrate the work and working hours and that they would have to join the Union to work here.

“I think they should have continued to operate and let me handle the problem when they knew I would be back that evening.

(Sgd.) G. L. HAMMOND”

Said Finding is not only unsupported by any substantial, competent or credible evidence, but is not even supported by the incompetent hearsay testimony upon which such finding is based almost in its entirety, which testimony was erroneously admitted over the repeated objections of the respondents. The respondents objected to all of the incompetent hearsay testimony introduced at the hearing and duly excepted to, and do hereby except to, all of the erroneous rulings of the Trial Examiner permitting the introduction of such testimony. Without in any way waiving their objections and exceptions thereto, and without in any way conceding the competency thereof, respondents call attention to the following portions of such incompetent hearsay testimony merely for the purpose of demonstrating that the Trial Examiner failed to correctly set forth such

incompetent hearsay testimony with respect to the matters referred to in said finding:

Martin testified that after the men left the office and returned to their respective jobs there was a bunch gathered around Spear, talking to him, and Bill Robinson came up and said "What are you going to do, Lonnie? It seems as though the boys aren't going to work with you." Spear said, "If that is the way the boys feel about it, we will go home then". Bill Robinson then said, "It looks like the thing to do, is to get this straightened out". (Tr. p. 541-2). After this the union men went home (tr. 543).

Wingo testified that, after he went back to the gin and Kelley Hammond shut his machinery off, he, Wingo, said to Farr, "Let's go. There is no use trying to work here." That he understood the employees had ordered all union men to leave (Tr. p. 1030, 1031).

Spear testified that after Mr. Louis T. Robinson instructed the men to return to their work and he would come out later and straighten the matter out, he, Spear, returned to the gin where he had been working and Tom Hammond stopped Farr's gin. Then Bill Robinson came along and said "Here boys, this won't do, Mr. Robinson wants the machinery to run" (Tr. p. 877). Then somebody yelled, "We are not going to work with these union men" (Tr. p. 879). Bill Robinson then said, "If you union boys can't operate this place, you'd better go home until we get this straightened out". Farr asked

Bill Robinson if that was an order, and Bill said "No, that is a request" (Tr. p. 880-1); that he thought it would be a good idea for the union men to go home until they got this matter ironed out (Tr. p. 881). Spear remained at the gin possibly ten or fifteen minutes after he got back to it from the office (Tr. p. 881). Kelley Hammond came along and talked with Spear. (Tr. p. 883). Spear then sat down on the stairs, stalling for time and waiting for somebody in authority to come around, but Louis T. Robinson did not come out, and as someone suggested that he depart he left and went to Farr's house (Tr. p. 884).

Farr testified that, after he got back to the gin on the morning of November 18, after Louis T. Robinson had instructed all the men to return to their jobs, he met Bill Robinson, who stated there did not seem to be enough union men to run the gins, and suggested that they should go home. Wingo, who was present, spoke up and asked Bill Robinson if he was telling them to go home as a foreman, and Bill Robinson replied "No, not as a foreman, but that is my idea that you men had better go home". Farr stood around a little while, but nobody said anything to him, except Bill Robinson, so he left (Tr. p. 290).

Andrade testified that, after he left the office on the morning of November 18, he went back to where he was working and sewed two sacks of cotton seed, but the machinery then stopped, so he went in to the gin building (tr. 1113). Right after he left the

gin he met Martin and Wingo on the outside and Bill Robinson walked up to them (tr. 1114). Bill Robinson said there wasn't enough union men to run the gins and they had to run, and the non-union boys would not work with them. Wingo asked Bill Robinson if that was an order, if he was giving that order as a foreman, and Bill Robinson said "No" that was just a suggestion to avoid further trouble. Andrade, Wingo, and Martin figured they were through there so they picked up their things and went to Mr. Farr's residence (tr. 1115).

The respondents, and each of them, specify all of the foregoing as Exception No. 88.

Exception No. 89.

Respondents, and each of them, hereby except to Finding No. 77, page 39 of the Intermediate Report, upon the ground that certain statements therein contained and relating to the matters hereinafter specified are contrary to and unsupported by the evidence and upon the ground that said finding does not fully or accurately state the evidence with respect to the matters therein contained.

The portion of said finding wherein it is stated that Powell "later was put in charge of the main engine plant" is contrary to the evidence. In this regard Powell testified on direct examination that he merely "operated the engines" at the main power plant for "something over a year". (Tr. p. 583). Upon cross-examination he testified that after the 1936-1937 ginning season ended in January or February of 1937 he was put at work engineering. When

Bill Robinson if that was an order, and Bill said "No, that is a request" (Tr. p. 880-1); that he thought it would be a good idea for the union men to go home until they got this matter ironed out (Tr. p. 881). Spear remained at the gin possibly ten or fifteen minutes after he got back to it from the office (Tr. p. 881). Kelley Hammond came along and talked with Spear. (Tr. p. 883). Spear then sat down on the stairs, stalling for time and waiting for somebody in authority to come around, but Louis T. Robinson did not come out, and as someone suggested that he depart he left and went to Farr's house (Tr. p. 884).

Farr testified that, after he got back to the gin on the morning of November 18, after Louis T. Robinson had instructed all the men to return to their jobs, he met Bill Robinson, who stated there did not seem to be enough union men to run the gins, and suggested that they should go home. Wingo, who was present, spoke up and asked Bill Robinson if he was telling them to go home as a foreman, and Bill Robinson replied "No, not as a foreman, but that is my idea that you men had better go home". Farr stood around a little while, but nobody said anything to him, except Bill Robinson, so he left (Tr. p. 290).

Andrade testified that, after he left the office on the morning of November 18, he went back to where he was working and sewed two sacks of cotton seed, but the machinery then stopped, so he went in to the gin building (tr. 1113). Right after he left the

gin he met Martin and Wingo on the outside and Bill Robinson walked up to them (tr. 1114). Bill Robinson said there wasn't enough union men to run the gins and they had to run, and the non-union boys would not work with them. Wingo asked Bill Robinson if that was an order, if he was giving that order as a foreman, and Bill Robinson said "No" that was just a suggestion to avoid further trouble. Andrade, Wingo, and Martin figured they were through there so they picked up their things and went to Mr. Farr's residence (tr. 1115).

The respondents, and each of them, specify all of the foregoing as Exception No. 88.

Exception No. 89.

Respondents, and each of them, hereby except to Finding No. 77, page 39 of the Intermediate Report, upon the ground that certain statements therein contained and relating to the matters hereinafter specified are contrary to and unsupported by the evidence and upon the ground that said finding does not fully or accurately state the evidence with respect to the matters therein contained.

The portion of said finding wherein it is stated that Powell "later was put in charge of the main engine plant" is contrary to the evidence. In this regard Powell testified on direct examination that he merely "operated the engines" at the main power plant for "something over a year". (Tr. p. 583). Upon cross-examination he testified that after the 1936-1937 ginning season ended in January or February of 1937 he was put at work engineering. When

asked what he meant by the term engineering he testified that it was "oiling, swabbing up grease, wiping machinery and keeping things up spick and span" and that the engines he was referring to were in the generator room where the power is generated. (Tr. p. 640)

The evidence affirmatively shows that Powell was engaged principally in the performance of seasonal work and odd jobs. His testimony shows that he originally came from Georgia to California in 1921 and lived in California off and on after that (Tr. p. 631); that prior to the time that he first went to work for the respondent Boswell Company in August 1936 he had been in Georgia and had not been employed for about two years (Tr. pp. 632 and 638). When he first started to work for the Company in August 1936 he did odd jobs until about September 1936 (Tr. p. 639). Then he worked in the gins until the ginning season ended in January or February 1937 (Tr. pp. 639-40). He was then put to work in the power plant where he oiled and wiped machines and kept things spick and span. He continued on that job until sometime in August 1937 (Tr. p. 640). He then took a couple weeks vacation, but was laid off immediately after he returned from vacation in August 1937 (Tr. p. 641). A few days later he was given a job digging ditches and doing work around the plant (Tr. p. 642). He continued at this type of work until September 1937 when the gins opened up and he was given a job tying cotton (Tr. p. 643). He remained at this

job until about September 27, 1937 when he injured his finger (Tr. pp. 583-4). He was off about two months with this injury (Tr. p. 584) and during the time he was off with the injury he received workman's compensation payments (Tr. pp. 643-4). After he had been released by the doctor he returned to work (Tr. pp. 584 and 645). He was put to work doing cleaning up work and other odd jobs (Tr. pp. 584 and 653). He continued doing this type of work until about the first of January 1938 (Tr. p. 654), but did not work steadily during this last mentioned period (Tr. p. 655). About the first of the year 1938 Mr. Gordon Hammond offered him a job as watchman (Tr. pp. 646 and 657), but he did not take it. Near the end of the year 1937 he got to drinking and gambling and stopped working at these odd jobs for Boswell Company, and left and went to Los Angeles and San Bernardino (Tr. pp. 657-8).

The Social Security record (Board's Exhibit No. 3) shows that Powell received a check in amount of \$12.60 for the week ending January 6, 1938, but on cross-examination he testified he did not recall working or receiving this check (Tr. p. 660).

Prior to leaving for Los Angeles in January 1938 he had issued a worthless check and after he left he was arrested and was brought back to Kings County in February 1938, was convicted of a felony based upon the issuance of such worthless check and was sentenced to and did serve four months in the County Jail as a part of three years probation which

was granted him (Tr. p. 637). In addition to the worthless check upon which he was convicted he had also prevailed upon Mr. Gordon Hammond to endorse for him another worthless check in amount of \$60.00 which he had drawn on a bank in Georgia (Tr. p. 661), in which bank he had no account (Tr. p. 670). He was not working for Boswell Company when he got Hammond to endorse this check (Tr. p. 690). He had cashed this \$60.00 check endorsed by Mr. Hammond and lost the money in a poker game (Tr. p. 664). Gordon Hammond was later obliged to pay the check but he did not sign any complaint against Powell, and Powell later repaid this \$60.00 check out of his salary (Tr. pp. 667-68). Powell also admitted on cross examination that in addition to his conviction on the bad check charge aforementioned he had also previously been convicted of a felony (stabbing) in the state of Georgia (Tr. p. 688).

After Powell was released from jail, following his conviction on the bad check charge, he returned to work for the Boswell Company on July 3, 1938 (Tr. p. 585) and thereafter worked until he left the plant following the incidents of the morning of November 18, 1938. Powell never applied for work after this last mentioned date (Tr. p. 2637).

Respondents, and each of them, specify all of the foregoing as Exception No. 89.

Exception No. 90.

Respondents, and each of them, hereby except to Finding No. 78, page 39 of the Intermediate Report,

upon the ground that certain portions thereof relating to matters hereinafter designated are contrary to and unsupported by the competent evidence, and upon the ground that it inaccurately sets forth the testimony, and upon the ground that certain portions thereof are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents as hereinafter designated.

No evidence was introduced which shows or tends to show that respondents or any of them conferred any authority upon Tom Hammond or Bill Robinson, or either of them, or any other person referred to in said finding, to speak or act for or on behalf of any of the respondents in regard to the matters therein mentioned.

The statement in said finding that the men "were forced out of their employment" is contrary to the evidence. The evidence shows that none of the men referred to in said finding were forced out of their employment but, on the contrary, that after discussing the matter among themselves they decided it would be better for them to leave.

The evidence also affirmatively shows that none of the respondents authorized or in any way participated in the alleged eviction of the union men, and did not in any way sanction or approve the action taken by any of the persons who participated in the alleged eviction on the morning of November 18, 1938.

The portions of said finding relating to two al-

leged conversations between Powell and Bill Robinson are based solely upon hearsay and incompetent testimony erroneously introduced over the objections of respondents. The respondents at the time of the hearing objected to the introduction of the testimony regarding said alleged conversations between Bill Robinson and Powell upon the ground that such testimony was hearsay; that it was not binding on any of the respondents, no authority having been shown by the respondents to Mr. Bill Robinson to speak for respondents or any of them with regard to any of the matters under investigation, and also upon the ground that such testimony was incompetent, irrelevant and immaterial. The objections were erroneously overruled by the Trial Examiner and exceptions were duly taken thereto (Tr. p. 614; 621, 622). The respondents and each of them hereby except to such rulings upon all of the grounds above stated which were urged in support of the objections.

The portion of said finding relating to conversations between Powell and Tom Hammond are based solely upon hearsay and incompetent testimony erroneously introduced over the objections of respondents. The respondents at the time of hearing also objected to the introduction of the testimony regarding the alleged conversations between Tom Hammond and Powell, upon the ground that such testimony was hearsay, incompetent, irrelevant and immaterial and not binding upon any of the respondents. The objections were erroneously overruled

by the Trial Examiner and an exception was duly taken thereto (Tr. pp. 614-17; 618-19; 620-1). The respondents, and each of them hereby, except to such rulings upon the grounds above stated which were urged in support of the objections.

The respondents, and each of them, hereby specify all of the foregoing as Exception No. 90.

Exception No. 91.

Respondents hereby except to the whole of Finding No. 79, pages 39 and 40 of the Intermediate Report, upon the ground that it is contrary to and unsupported by the competent and credible evidence and upon the ground that certain portions thereof hereinafter designated are based solely on incompetent testimony erroneously introduced over the objections of respondents.

The evidence shows that Powell's testimony was thoroughly discredited and impeached. He admitted two prior convictions for felonies and his testimony throughout was contradictory, uncertain and unreliable. One of the felonies for which he was convicted was based upon the issuance of a worthless check upon a bank in which Powell had no account. When questioned regarding the nature of this offense at the hearing in this case he testified that it was a gambling debt and that he had purchased chips in a poker game with it. He was thoroughly impeached and discredited by the original transcript in the preliminary hearing in said criminal case. Said transcript showed without doubt that the complaining witness had testified in Powell's presence

that he cashed the check for Powell and gave him three \$5.00 bills. It likewise demonstrates that Powell himself testified and did not deny that he received three \$5.00 bills for the check in question. The transcript further shows that he was given an opportunity to make any comment which he chose and he made no comment. When confronted with this documentary proof Powell testified in this case that he could not recall anything that happened at the hearing.

Powell admitted also the issuance of another worthless check for \$60.00 and the fact that he induced Gordon Hammond to endorse it for him. The record shows that Gordon Hammond at no time brought criminal charges against Powell but that the check in question was issued by Powell upon a bank in which he had no account.

The other conviction for a felony was for stabbing a man in Georgia.

Powell's testimony throughout as demonstrated by the record is so contradictory that it is entirely worthless. For example, Powell testified on direct examination that he attended the charter meeting of the union on November 5, 1938 and that he told Gordon Hammond the next day about his attendance at the meeting. (Tr. p. 592). However, upon cross-examination he denied having given this testimony and testified that he did not attend any union meetings or gatherings of union men prior to November 14, 1938. (Tr. p. 716). He first testified on cross-examination that he had known or heard since July

13, 1938 that Prior was trying to organize the union. (Tr. p. 718). However, he later testified that it was only about three months before November 18, 1939 that he first heard these rumors. After having testified that he attended the charter meeting of the union held November 5, 1938 he later testified that he first saw the charter November 16, 1938. (Tr. p. 739).

On direct examination he testified that he talked with Gordon Hammond about the union on November 6, 1938. (Tr. p. 586). However, upon cross-examination he admitted that he was mistaken regarding his previous testimony and that he was also mistaken as to the date of the first union meeting he attended. He then claimed that since he first testified he had talked the matter over with his wife who had refreshed his memory. (Tr. p. 749).

He testified definitely that he did not know his good friend Martin had joined the union until November 16, 1938 (Tr. pp. 763, 824) but he later identified his application for union membership (Boswell's Exhibit No. 5) which was dated November 11, 1938, filled in in Martin's handwriting and he admitted that he turned his application for membership over to Martin whom he knew was handling the Secretary and Treasurer's duties. (Tr. pp. 767, 824, 826).

He testified on cross-examination that about November 20, 1938 he had a conversation with Gordon Hammond with reference to a letter he had received from the company and asked Hammond what it meant. Upon request on behalf of the respondents

he produced the letter referred to in said conversation and it appeared therefrom that the letter was dated November 28, 1938. The letter was admitted in evidence as Boswell's Exhibit No. 6. (Tr. pp. 804, 805).

It is stated in said finding that the alleged conversation with Clyde Sitton was about the 20th of November 1938. However, Powell testified that the date of the conversation was "a few days, just a few days after November 18" (Tr. p. 625). When asked to state the approximate date when he saw Mr. Gordon Hammond after that time, he first testified it was around the 25th of November; then that it was the 15th, and then that it was around the 20th (Tr. p. 627).

The alleged conversation between Powell and Gordon Hammond which is referred to in said finding was categorically denied by Gordon Hammond. (Tr. pp. 2586, 2587). Hammond also denied having at any time sent Clyde Sitton to notify Powell to come and see him. (Tr. p. 2586).

The portion of said finding relating to an alleged conversation between Clyde Sitton and Powell is based solely upon hearsay and incompetent testimony which was erroneously introduced over the objections of respondents.

The respondents at the time of the hearing objected to Powell's testimony with regard to the alleged conversation between him and Clyde Sitton upon the ground that such testimony was hearsay and that such conversation was not binding upon

any of the respondents to the proceeding, no authority having been shown from the respondent Boswell Company to Sitton to speak for it with regard to any of the matters under investigation in said proceeding. This objection was erroneously overruled by the Trial Examiner and an exception was duly taken thereto (Tr. p. 625-627). The respondents and each of them hereby except to such ruling upon all of the grounds above stated which were urged in support of the objection.

The following portion of said finding, to-wit: "Hammond never notified Powell to return to work" is irrelevant to the issues of this case. The evidence shows no promise or agreement whatsoever on the part of Hammond at any time to notify Powell to return to work, and Powell never applied for work after November 18, 1938. (Tr. p. 695; p. 2637).

Respondents, and each of them, specify all of the foregoing as Exception No. 91.

Exception No. 92

The respondents, and each of them hereby, except to Finding No. 80, page 40 of the Intermediate Report, on the ground that it is incomplete and that the statement therein contained that "Powell was discharged by respondent on November 28, 1938, because of his union activities and membership in Local No. 21798" is not supported by the evidence and is contrary to the evidence.

The evidence affirmatively shows that the reason Powell was laid off on November 28, 1938, was solely because of the following facts:

First, that there was not sufficient work available for all of the men who had previously been working at the plant on November 18, 1938, because of the shortage of cotton and the seasonal decline in operations (Tr. p. 2422), and, second, because the last job held by Powell with the Company was as helper in the warehouse. This was Fred Armenta's regular job but he had not been working because of injury. Armenta recovered from his injury and went back to his regular job and Powell's further services were no longer required. (Boswell Exhibit No. 16). His lay-off was because of the foregoing, and not because of any union activities or membership.

In addition to the matters referred to in said Finding, the evidence shows that some time after December 1, 1938, Powell contacted Gordon Hammond regarding the injury which he had previously received while working at the Boswell plant. He applied for additional compensation and was rated by the Industrial Accident Commission as permanently disabled and awarded compensation upon that basis for a period of 63 weeks (Tr. pp. 695 to 698).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 92.

Exception No. 93.

The respondents, and each of them hereby, except to Finding No. 81, pages 40 and 41 of the Intermediate Report, upon the ground that the matters therein contained are not supported by the evidence and do not fully or accurately state the evidence with

respect to certain of the matters therein mentioned and hereinafter referred to.

The evidence shows that Eugene Clark Ely, during the time he was employed by the Boswell Company, worked merely at odd jobs in connection with certain of the Company's seasonal operations. He was first employed in September, 1937, as an electrician's helper at 35 cents an hour. He worked at this job about four months and then worked as watchman in the cotton yards for about two weeks. Thereafter he went to work in the oil mill (Tr. p. 1351). His job in the oil mill consisted of just cleaning up, keeping the expellers cleaned out and pushing the wheelbarrow. He continued at this job until about March 24, 1938, when he was laid off. Although he was not sure when he next came back to work, his Social Security record (Board's Exhibit No. 3) shows that the next work he did for the Company after March 24, 1938, was during the week ending May 5, 1938. He then worked two or three weeks running planting seed (Tr. p. 1352). He was then laid off again and returned to work about July 7, 1938, although he was not positive as to the date (Tr. p. 1371). His Social Security record (Board's Exhibit No. 3) shows that after May 19, 1938, the next work done by him was during the week ending July 7, 1938. After returning to work on July 7, 1938, he baled straw for two or three weeks, approximately between July 7 and 21 (Tr. p. 1371; Board's Exhibit No. 3). He was then laid off again about July 21, 1938, and did not do any further work for

the Company until October, 1938 (Tr. pp. 1352 and 1371). At this time he was engaged in running a cotton drier. After working on this job for four days his pay was increased from 35 cents to 40 cents an hour. He worked on the cotton drier until some time in December, 1938, when some of the gins shut down because it was the end of the ginning season, and then went to work on the construction gang during the month of January, 1939. While on the construction gang he worked part of the time at the plant and part of the time at other places (Tr. p. 1372). At his own request he laid off on Sunday, January 29, 1939. He did not work because he had hurt his shoulder, it was raining and there was not much to do (Tr. p. 1355).

The respondents at the time of the hearing objected to testimony by Ely respecting an alleged conversation which he had with Rube Lloyd on Saturday, January 28, 1939, relative to his taking the next day off, upon the ground that such conversation was hearsay and was not binding on the respondent and no authority had been shown for Rube Lloyd to speak for any of the respondents. This objection was erroneously overruled by the Trial Examiner and an exception was taken to such ruling (Tr. p. 1355). The respondents, and each of them, except to such ruling upon the grounds above stated which were urged in support of the objection. The portion of the finding relating to said conversation was based on said hearsay evidence.

The respondents at the time of the hearing also

objected to Ely's testimony, regarding what occurred at Bakersfield on January 29, 1939, in front of Teamsters Hall, upon the ground that same was incompetent, irrelevant and immaterial. This objection was erroneously overruled by the Trial Examiner and an exception taken (Tr. p. 1357). After this objection was overruled Ely testified that he, Prior, Elgin Ely, W. R. Johnson, R. K. Martin and several other fellows from the plant were standing out in front of the Teamsters Hall in Bakersfield, and Mr. Bill Boswell came by driving about fifteen miles an hour and he gave them the once over as he went by. At the time of the hearing the respondents moved to strike out this answer as not responsive to the question and called for a conclusion of the witness. This motion was erroneously denied and an exception taken (Tr. p. 1357). The respondents and each of them hereby except to the ruling on the above mentioned objection and to the denial of said motion to strike.

W. W. Boswell testified that he is in charge of the Company's cattle operations and has no supervision over any of the employees who work at the Coreoran plant (Tr. p. 2776); that he did not know Eugene Clark Ely prior to the commencement of the hearing in this case, and although he might have seen him about the plant he did not know who he was and did not remember seeing him. He testified that he did not see Ely in Bakersfield on January 29th and in fact had never heard of nor seen the Teamsters Hall in Bakersfield, and did not know who Ely was at that time (Tr. p. 2777).

The portion of said Finding wherein it is stated that W. W. Boswell is a supervisory employee of the Boswell Company is contrary to the evidence. The only evidence in this regard was the testimony of W. W. Boswell, above mentioned, that he had no supervision over any of the employees at the Corcoran plant. No evidence was introduced to the contrary or to show that W. W. Boswell was in any manner a supervisory employee insofar as the matters in this case are concerned. No evidence was introduced to show that he had charge of the meal or grain for the company.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 93.

Exception No. 94.

The respondents, and each of them hereby, except to Finding No. 82, page 41 of the Intermediate Report, on the ground that said Finding is not supported by the evidence and is contrary to the evidence, and does not fully or accurately state the evidence with respect to the matters therein referred to.

Gordon Hammond testified that Ely was not discharged on or about January 30, 1939 (Tr. p. 2633); that on the morning of January 30, 1939, he met Ely in the front room of the office at the plant and Ely told him that Lloyd said there wasn't any more work. Gordon Hammond then told him they would go load some cotton. Hammond went out the front door across to where they were loading, but when he got over there Ely didn't follow him (Tr. p.

2634) but left the plant. (Tr. p. 1360). He has never applied for work since that time (Tr. p. 2635).

The following facts bear upon the credibility of E. C. Ely, who is known as "Fat" Ely (Tr. p. 1882). On cross-examination he testified that he first went to a union meeting during January, 1939 (Tr. p. 1373), but testified that he had been in the same house where union meetings were held before that time. When he was asked on what occasions he had been in the same house where union meetings were held he testified positively that he had never been to a gathering of union members before January, 1939 (Tr. pp. 1373, 1374).

However, Griffin testified that E. C. (Fat) Ely attended a regular union meeting on November 15th or 16th, 1938 (Tr. p. 1344), and Martin likewise testified that E. C. Ely was present at the union meeting on November 16, 1938 (Tr. p. 556).

When Griffin's testimony was called to E. C. Ely's attention later in the hearing he admitted that as early as November 16, 1938, he had attended social gatherings of union members (Tr. p. 1901) and testified that Griffin may have thought he was a member because he went around with union men (Tr. p. 1900).

Ely testified that he went around with Johnston and his brother, Elgin Ely, long before he went to the Bakersfield meeting (Tr. p. 1375), that the three of them were living together during the fall of 1938 and that Gordon Hammond had been to his house where the three were living (Tr. p. 1379). All of

that time after October, 1938, Ely had been working steadily at the Boswell plant.

The respondents at the time of the hearing objected to testimony by Eugene Clark Ely regarding his alleged conversation with Rube Lloyd on the morning of January 30, 1939, on the ground that such testimony was hearsay; that it was not binding on the respondents, and no authority had been shown for Rube Lloyd to speak for the respondents. This objection was erroneously overruled by the Trial Examiner and an exception duly taken thereto (Tr. p. 1359). The respondents, and each of them, hereby except to said ruling upon the grounds above stated which were urged in support of the objection.

The respondents, and each of them, specify all of the foregoing as Exception No. 94.

Exception No. 95.

The respondents, and each of them hereby, except to the portion of Finding No. 83, page 41 of the Intermediate Report, wherein it is stated that Eugene Clark Ely "was discharged on January 30, 1939, because of his membership in Local 21798 and because of his union activities" upon the ground that such statement is not supported by the evidence and is contrary to the evidence.

The evidence shows, as hereinabove stated in Exception No. 94 to Finding No. 82, that Ely was not discharged on January 30, 1939, but on the contrary he was offered work loading cotton on the morning of that day by Mr. Gordon Hammond, but he did not accept the offer, and left the plant of his own accord

and never applied to the Company for work after that time.

The respondents, and each of them, specify the foregoing as Exception No. 95.

Exception No. 96.

Respondents, and each of them, hereby except to Finding No. 84, page 41 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence.

Respondents, and each of them, hereby specify the foregoing as Exception No. 96.

Exception No. 97.

The respondents, and each of them, hereby except to the omission by the Trial Examiner from the Intermediate Report of any statement whatsoever concerning the employment records of E. J. (George) Andrade, H. N. Wingo, and L. A. Spear.

The evidence, and particularly the employment record of each of these men, shows conclusively that each of them, during the times that he was employed by respondent Boswell Company, was engaged almost entirely in the performance of seasonal work in and about the plant in connection with the normal seasonal operations of the plant.

E. J. (George) Andrade first started to work for the Boswell Company in September 1933, sewing cotton planting seed at 30c an hour. Upon the occasion of his first employment he worked only about four weeks and either quit or was laid off. He was next reemployed by the Company in September 1934, as gin helper (Tr. p. 1100), and worked at this job

until the latter part of December 1934. He testified that, in general, since that time in 1934 he worked when the gins or the mill operated, and was laid off in between those periods (Tr. p. 1101).

He testified that in 1938 he worked in the oil mill until it shut down the latter part of September 1938, and while working in the mill he was sewing sacks. When the mill closed he was laid off, but was re-employed as clean up man at the gins about October 6, 1938, at forty cents per hour, and continued at this job until November 18, 1938. (Tr. p. 1102).

The social security record of Andrade (Board's Exhibit No. 3) also confirms the fact that Andrade worked only when the gins or the mill operated, as it shows that he worked until the mill closed in March 1938, that he commenced work again when the mill opened May 3, 1938, and was laid off when it closed again May 17, 1938; that he went to work again when the mill opened July 1, 1938, and continued to work until it closed again on September 27, 1938 (tr. 2551), and that his next employment was during the week ending October 13, 1938, which, as he testified, was as clean up man in the gins.

He also admitted upon cross-examination that after he went to work in the gins about October 6, 1938, as clean up man, the clean up of the gins did not take all of his time and, in addition to doing this type of work, he also unloaded cotton and helped out wherever there was anything to be done, and did odd jobs around the plant, and that this odd job work continued until he left the plant on November 18 (tr. 1125).

The undisputed evidence shows that he never applied for work at the Boswell Company since November 18, 1938 (Tr. pp. 1118 and 2636).

Contrary to the statement which is made throughout the report that it was the practice of the Company to recall employees following layoffs, Andrade admitted that when he was reemployed in July 1938 after having previously been laid off when the mill closed in May 1938, he went to the plant and applied for work and was hired (Tr. p. 1121). He also admitted that after he was laid off when the mill closed September 27, 1938, he, of his own volition, went to the plant about October 5, 1938, and applied for work (Tr. p. 1124).

He also admitted upon cross-examination that during the last period of his employment, subsequent to October 6, 1938, as clean up man, the clean up of the gins did not take all of his time and, in addition to doing said type of work, he also unloaded cotton and helped out wherever there was anything to be done, and did odd jobs around the plant, and that such odd jobs continued until he left the plant on November 18, 1938 (Tr. p. 1125). This fact indicates, and the evidence shows, that the work on which he as well as other employees were engaged about this time was running out.

H. N. Wingo was first employed by the Boswell Company in November 1937, at which time he worked feeding suction at the gin (Tr. p. 990). He continued on this job for two weeks and then went to work as press helper tying out cotton. He con-

tinued doing that type of work for some six or eight weeks. Then he helped turn some hot seed that was piled up in the warehouse one or two nights, and thereafter helped haul some of the hot seed to the oil mill for three or four nights. He was then put to work in the seed house about the middle of January and worked there until the mill shut down in March 1938. (Tr. p. 991-2). He was then off only a few days when he started to work around where some pumps were being set out on the levee. After he worked at this job one or two days he worked around the plant in Corcoran hoeing weeds and cleaning up. He testified this was in April 1938 and he was then laid off at the plant and got a job as helper out in 749 District (Tr. pp. 992-3). While working on this last mentioned job, which continued from sometime in April until about June 9, 1938, he was paid by Tulare Lake Land Company and was not working for the Boswell Company (Tr. p. 994). He testified that about the first of July 1938, he was reemployed by the Boswell Company in the seed house at the oil mill, and continued on that job until sometime in the latter part of September 1938, when he was laid off. (Tr. pp. 995; 1014).

The undisputed and stipulated evidence in this case shows that the oil mill was closed down September 27, 1938 (tr. 2551).

Upon cross-examination, Wingo was shown his Social Security Record (Board's Exhibit No. 3), which showed conclusively that he was not on the payroll between the week ending March 24, 1938,

and the week commencing about July 1, 1938. He admitted he was laid off by the Boswell Company about March 24, 1938 (tr. 1010), but insisted, notwithstanding the record, that he went back and worked a few days after the mill shut down the latter part of March (tr. 1011), and that after the mill shut down he was only off two or three days until he was employed for a short time, and then laid off again, and that he helped set pumps and hoed weeds around the warehouse during these few days.

The lack of memory of this witness is shown by the fact that both on direct and cross-examination he testified that he made application to join the Union on September 2, 1938. However, he did not remember what union meetings were held, except he stated he attended one about November 16. He did not remember if this was the first meeting he attended, and did not even remember the date he was initiated (tr. 1019). Neither did he remember when he received his union button, nor how many other employees of the Boswell Company were present at the union meeting which he did attend (tr. 1020).

L. A. Spear was first employed by the Boswell Company in July 1928, as a ginner (Tr. pp. 852-3). He testified that the first time he was laid off for more than a month was in 1931, at which time he was laid off for a period of three months (Tr. p. 853). The second time he was laid off for over a month was in 1932, when he was laid off for three

months (Tr. p. 854). He testified that the third time he was laid off for a period of in excess of one month was in the spring of 1933. He stated at that time conditions didn't look good and he stayed away for about 18 months (Tr. p. 854). Spear stated that he was reemployed by the Company in September 1934 (Tr. p. 854).

According to Spear, the next time he was off more than one month was in 1936, at which time he was laid off for a period of two or three months (Tr. p. 854). In February of 1938 he was again laid off for two or three months until about May or June, when he was employed again (Tr. pp. 855 and 944). When he again went to work he did repair work and ginning (Tr. p. 855).

Spear testified that as early as about October 10, 1938, he realized that the work was running short. At that time he talked with Gordon Hammond and was told by Hammond that there was not enough work for the men employed, unless the mill started. Spear testified that at the time of this conference it was his opinion that if he had been foreman there were men on the payroll that were not needed (Tr. p. 940). He testified that the Company was going to lay off these men unless the mill was started (Tr. p. 940). He also testified that the 1938-39 season was a very short season, that there was a decrease in cotton acreage and there was no night crew on the gins (Tr. p. 941). He also testified that the work at the gins was running out about November 18, (Tr. p. 942).

All of the foregoing men left the plant on November 18, and none of them applied for work since that time. Although these men did no work after November 18, Spear was carried on the payroll and received his pay until December 5, 1938, at which time the gin on which he had been working closed down (Boswell Exhibit No. 19 and Board's Exhibit No. 3); Wingo was carried on the payroll and received his pay until December 3, 1938, at which time the gin on which he had been working closed down (Boswell Exhibit No. 18 and Board's Exhibit No. 3); and Andrade was carried on the payroll and received his pay until November 26, 1938, at which time the work on the planting seed which he had previously been doing was completed (Boswell Exhibit No. 14 and Board's Exhibit No. 3).

Respondents, and each of them, specify all the foregoing as Exception No. 97.

Exception No. 98.

The respondents, and each of them, hereby except to the whole of Finding No. 85, pages 41, 42 and 43, of the Intermediate Report, except the statements with respect to the letters which were mailed to certain of the men as therein mentioned, upon the ground that none of such statements are supported by the evidence, and that, with this exception, all the statements therein contained are contrary to the evidence, as is particularly set forth in the exceptions to the prior Findings contained in the Intermediate Report, which exceptions are hereby in-

corporated with the same effect as if stated herein in full.

Respondents, and each of them, specify the foregoing as Exception No. 98.

Exception No. 99.

The respondents, and each of them, hereby except to the whole of Finding No. 86, page 43 of the Intermediate Report, upon the ground that the whole of said Finding is contrary to and unsupported by the evidence, as is particularly set forth in the exceptions to the prior Findings, contained in the Intermediate Report, which exceptions are hereby incorporated with the same effect as if stated herein in full.

Respondents, and each of them, specify the foregoing as Exception No. 99.

Exception No. 100.

The respondents, and each of them, hereby except to the whole of Finding No. 87, page 43 of the Intermediate Report, upon the ground that the whole of said Finding is unsupported by the evidence and is contrary to the evidence, as is particularly set forth in the exception to the prior Findings contained in the Intermediate Report, which exceptions are incorporated herein with the same effect as if stated herein in full. Respondents, and each of them, further except to said Finding No. 87, upon the ground that the statement contained in said Finding that Powell was discharged on November 28, 1938, is inconsistent with the statement in Finding No. 86,

where it is stated that he was discharged on November 26, 1938.

Respondents, and each of them, specify the foregoing as Exception No. 100.

Exception No. 101.

The respondents, and each of them, hereby except to the whole of Finding No. 88, page 43 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence, as is particularly set forth in the exceptions to the prior Findings contained in the Intermediate Report, which exceptions are incorporated herein with the same effect as if restated herein in full.

Respondents, and each of them, specify the foregoing as Exception No. 101.

Exception No. 102.

The respondents, and each of them hereby, except to the statement contained in Finding No. 90, page 44 of the Intermediate Report, that "Joe Briley was recalled to work a few days after November 18, 1938" upon the ground that such statement is not supported by the evidence and is contrary to the evidence. The undisputed testimony of Gordon Hammond showed that Joe Briley came back November 19, 1938 and asked Gordon Hammond for work. He was put to work and has worked since that time when work was available (Tr. p. 2630). There was no evidence whatever that Joe Briley was ever recalled to work after November 18, 1938 or at any other time.

Respondents, and each of them, specify the foregoing as Exception No. 102.

Exception No. 103.

Respondents, and each of them, hereby except to all portions of the findings contained in said Intermediate Report relating to the occurrences at any of the meetings of the Independent, and relating to any communications between the Independent or members thereof and persons other than the respondents, and relating to any acts by the Independent or any members thereof, upon the ground that said findings are based solely upon hearsay and incompetent evidence which is in no way binding upon respondents, or any of them, and all of which evidence was erroneously introduced over the objections of respondents.

Respondents at the hearing duly objected to the introduction of all such evidence upon the foregoing grounds and the trial examiner erroneously overruled said objections to which respondents and each of them duly excepted and do hereby except.

Respondents, and each of them, hereby specify the foregoing as Exception No. 103.

Exception No. 104.

The respondents, and each of them, hereby except to Finding No. 91, page 45 of the Intermediate Report upon the ground that certain of the statements therein contained and herein after referred to are not supported by the evidence and are contrary to the evidence.

The statement that Rube Lloyd, Clyde Sitton and the unidentified third person came to Robinson's office on the morning of November 18, and "advised him that a number of respondent's employees had decided to organize a company union" is unsupported by and contrary to the evidence.

The undisputed testimony shows that when these three men came to Mr. Robinson on the morning of November 18, they asked him to advise them as to what he thought they should do in connection with the disturbance that had taken place, and he told them he was not in a position to advise them and they would have to seek other advice. They did not represent themselves to him at that time as a committee appointed by the non-union men (2146). The evidence does not show that these three men discussed the matter of organizing a union, or even mentioned the same, at this time. The evidence merely shows, as above stated, that they asked Mr. Robinson's advice regarding the disturbance of that morning and he told them he could not advise them and they would have to seek advice elsewhere.

The statement in said Finding that, "The Committee left and went to the office of the district attorney of Kings County seeking information as to the formation of an independent union" is contrary to the evidence. Mr. Robinson testified that at the time these three men called on him on the morning of November 18 they did not represent themselves as a committee of the non-union men at that time. The evidence does not show that these three men

composed the committee which subsequently went to see the District Attorney. On the contrary, the evidence shows that the committee which went to see the District Attorney, later in the day was composed of about five men, the names of whom the District Attorney did not recall (Tr. 172).

The respondents, and each of them, specify the foregoing as Exception No. 104.

Exception No. 105.

The respondents, and each of them, hereby except to Finding No. 92, page 45 of the Intermediate Report, upon the ground that said Finding does not fully or accurately set forth the evidence with respect to certain of the matters therein mentioned.

The undisputed testimony of District Attorney Roger R. Walch shows that on the morning of November 18, 1938, a group of four or five men came to his office to see him. They said they were employees working down at the Boswell cotton gin and that there had been a little misunderstanding that had arisen at the Boswell plant that morning (Tr. 172). He did not know any of these men personally and did not recall their names or keep any record of the matter.

They asked him what he knew about the Wagner Act and the possibility of the local employees forming an employees' union at the Boswell plant. He told them he was not familiar with the Wagner Act, but it was his understanding that employees of any organization could form their own employees' union if it was the desire of the majority of the employees

to do so, or could select their own bargaining agency (tr. 173).

They stated to him that they represented practically the unanimous feeling of the employees of the Boswell Company; that they did not feel as though they desired to have an outside union come in; that there had been talk of the American Federation of Labor coming into the plant and they felt they would rather have their own bargaining agency. They stated there was some dissension—seven or eight men down there had been talking up an American Federation of Labor affiliate. They asked him if he would represent them in the organizing of a union, and he told them No, that as District Attorney he would take no part in a private capacity for any person in connection with labor matters because he had to be unfettered when he was called upon to rule on labor questions (tr. 174).

He told them there were two local unions of employees that had been organized recently in the county, and gave them the names, one being the Lucerne Creamery and the other the Caminol. He suggested that probably the attorney in the county who knew most about the Wagner Act was Attorney Clark Lament (Clement) from Lemoore, and suggested if they were thinking of forming their union that he would be a good attorney to see. The District Attorney told them if they wished he would call up the Caminol and see if there was anybody there who was a member of the Employees' organization who could give them information with re-

spect to how much it cost, how it worked, and how the organization was perfected, and when they asked that he do this he called the chief bookkeeper at the Caminol, who stated he would see some of the boys and when the Committee came down, if there were any there that could give them any help they would be glad to do so.

The District Attorney asked this group of men that came to see him if the Boswell management had anything to do with this, and they replied, No, that the management did not even know they were coming up to consult with him, that they were expressing the sentiment of the employees. The District Attorney then asked them why they wanted their own and not an outside union, and they said they didn't feel like paying tribute to an outside organization; that Boswells had always treated them right and their wages were satisfactory, and they felt that inside of their own organization they could do better than have an outside bargaining power (tr. p. 175-6).

This group of men also asked the District Attorney if he had heard about the trouble down at the Boswell plant, and he said he had (tr. 176). They told him one or two men had been talking up the American Federation of Labor affiliate and they had gotten tired of the talk and didn't want to be bothered with them, and they had asked them to leave the premises. He asked if any force had been used in the ejection of the men, and they replied nobody was injured and no force of any consequence

was used. He then asked them if they had evicted them from the premises on the authority of the Boswell people, and they said No. He then instructed them that they had no power or authority to eject anyone from anyone else's property and didn't want to hear any more of that kind of thing going on; that he didn't think it amounted to a great deal; that no complaint had been made at that time by any of the men or individuals who later claimed they had been evicted, and that, so far as he was concerned, no formal complaint had come into his office, but he would not countenance the use of force by anybody (tr. 177).

Respondents, and each of them, specify the foregoing as Exception No. 105.

Exception No. 106.

The respondents, and each of them, hereby except to Finding No. 93, page 46 of the Intermediate Report, upon the ground that the statements therein contained are not supported by the evidence and are contrary to the evidence and do not fully or accurately state the evidence with respect to the matters therein referred to.

Mr. Louis T. Robinson testified that when Lloyd, Sitton, and Busby called on him the afternoon of November 18, they told him that a committee had gone to see the District Attorney and the District Attorney had told them that he did not think anything had happened that would be cause for action by his office. They also told Mr. Robinson that they discussed the matter with the District Attorney and

asked him about forming an employees' association, and the District Attorney told them that such associations had been formed by the employees of Caminol Company and the Lucerne Creamery, and recommended that they investigate it at those places (tr. 2151).

This was the first knowledge Mr. Robinson had respecting the fact that the non-union men had appointed a committee, and that the committee had gone to the District Attorney for instructions as to the best method of procedure for them to follow (tr. 2151-2).

The respondents, and each of them, specify the foregoing as Exception No. 106.

Exception No. 107.

Respondents, and each of them, hereby except to Finding No. 94, pages 46 and 47 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter specified are contrary to and unsupported by the evidence, are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents and are incomplete statements of the evidence.

All portions of said Finding relating to the occurrences at the meeting of employees on November 18th are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents. Respondents duly objected to the introduction of such testimony upon the grounds that it was incompetent, irrelevant and immaterial, that it was hearsay and not binding upon respon-

dents and that no authority was shown from any of the respondents to any of the persons present at said meeting to speak for or on behalf of any of said respondents. Trial Examiner erroneously overruled said objections and permitted the introduction of said testimony to which rulings respondents and each of them duly excepted and do hereby except. (Tr. p. 1883).

There is no evidence whatsoever to support the statement that "the committee arranged for a meeting to be held that evening in th office of the Boswell Company's plant at Corcoran, California". It was not shown who made these arrangements, but the evidence did show conclusively that the management of the Boswell Company did not have anything to do therewith.

It is also stated in said Finding that "a number of the employees together with those in supervisory capacity attended that meeting," and "the record shows that Samuel Brenes, head bookkeeper in the office of respondent company at Corcoran, and a number of other supervisory employees attended that meeting; including Busby, Yankee Roberson, Rube Lloyd and Kelley Hammond." These statements with respect to alleged supervisory employees are mere conclusions of the Trial Examiner, and are not supported by any evidence, and are contrary to the evidence. The evidence affirmatively establishes that none of the employees who attended this meeting were in any wise authorized to speak or act for the Boswell Company, or to in any wise bind

the Company, and that none of them had any authority to hire or fire or to speak for the Company with respect to hours, wages, or conditions of employment.

Respondents incorporate herein with the same effect as though set herein in full Exception No. 54.

It is also stated in said Finding that "minutes were kept of the meeting and offered as Board Exhibit No. 19." [This statement is not supported by the evidence, and is contrary to the evidence, which showed that Board's Exhibit No. 19 was merely a list of names, which was a part of the minutes of the first meeting held on the evening of November 18, 1938, and the complete minutes of said meeting were not introduced into evidence.

Eugene Clark Ely, who was called as a witness by the Board, testified, on direct examination, that all but one or two of the employees attended the meeting on the night of November 18, 1938 (Tr. 1883), and, on cross examination, testified that about 70 persons attended this meeting; that practically everybody then employed at the Corcoran plant joined the Independent. The evidence shows conclusively that a large majority of the employees who were working at the plant on November 18, favored the organization of an independent union.

Louie Robinson testified that the group of employees who came to see him the afternoon of November 18, 1938, informed him that they had been told by the District Attorney that employees' unions had been formed at the Caminal Company and at

the Lucerne Creamery. He stated that that was the first time he had heard about those employees' organizations. He further testified that his purpose in requesting the Los Angeles office of the Boswell Company to obtain any information they could regarding company unions and to give him the benefit of their ideas in that connection, as mentioned in the letter of November 18, was that he thought the employees in the Corcoran plant might form one of those associations and that the company might be called on to recognize it, and he believed he should be giving the matter some thought. (Tr. pgs. 2152, 2153). He testified that he wanted to have the benefit of any information Mr. Boswell could obtain so that he would be better qualified to make any such decisions in the event they were called for. Mr. Robinson also testified that he did not have anything whatsoever to do, nor to his knowledge did any other representative of the Boswell Company have anything to do with the organization of the employees' association (Tr. p. 2154).

Furthermore, the portion of said finding purported to quote a portion of the letter therein referred to is not in fact a correct quotation. Portions thereof are removed from their context and omitted without any indication thereof.

The respondents, and each of them, specify the foregoing as Exception No. 107.

Exception No. 108.

Respondents, Associated Farmers and Corcoran Telephone Exchange, hereby except to the portion

of Finding No. 95, relating to a conversation between Gordon Hammond, Rube Lloyd and E. M. Roberson, upon the ground that said portion of said Finding is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of said respondents. Said respondents duly interposed objections to the questions calling for such testimony upon the ground that said questions called for hearsay and incompetent evidence and the Trial Examiner erroneously overruled said objections to which said respondents excepted and do hereby except (Tr. p. 2695, line 19 to p. 2696, line 1). No evidence was introduced which showed or tended to show any authority conferred by respondents, or either of them, upon any of the persons mentioned in said paragraph to act or speak for or on behalf of said respondents, or either of them.

Respondents, Associated Farmers and Coreoran Telephone Exchange, hereby specify the foregoing as Exception No. 108.

Exception No. 109.

Respondents, and each of them, hereby except to Finding No. 95, page 46 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter designated are contrary to and unsupported by the evidence and are incomplete and inaccurate with respect to the matters therein referred to.

Gordon Hammond testified (and his testimony was not denied) that on the morning of November 18 he left for Los Angeles about 8:30 A. M. and

did not return to the plant until about 7:00 o'clock that evening. When he returned to the plant that evening, he made up the time cards and weighed some cotton. He did not know the employees intended to meet in the office that evening and they had not asked his permission, and he was not present at, and did not take any part in, the meeting (tr. 2568). He further testified that after he had made out about half of the time cards, he was called out to the scale house to weigh some cotton. Before leaving his office to weigh the cotton he talked with E. M. Roberson and Rube Lloyd, who happened to be present (tr. 2695). He asked them what the crowd was doing in the front office, and they told him there had been some difficulty among the employees that day out in the yard, and the men had come there that evening for the purpose of letting the Company know they were satisfied with their work, the way it was managed, and conditions in every way (tr. 2696). They told him what had taken place that morning, and that there seemed to be some misunderstanding among the employees that morning (tr. 2697). They also told him about Spear having been taken to the office, and Mr. Louis T. Robinson telling all of the men to return to work, but that later some of the Union men had left. Mr. Hammond told Lloyd and Roberson that was the worst thing they could have done, that they shouldn't have done that (tr. 2701).

The evidence showed that the meeting of employees referred to in said Finding was held in the lobby

of the administration building and not in the portion of the building in which Gordon Hammond's office is located. The administration building was described as a building containing eight or ten rooms, including the lobby where the bulletin board is located (tr. pgs. 1969 to 1971).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 109.

Exception No. 110.

Respondents, and each of them, hereby except to Finding No. 96, pages 47 and 48 of the Intermediate Report, upon the ground that certain portions thereof hereinafter specified are contrary to and unsupported by the evidence, are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and are incorrect and incomplete statements of the evidence.

All portions of said Finding relating to occurrences at the meeting of employees held on November 28, 1938, are based solely upon hearsay and incompetent evidence erroneously introduced over respondents' objection. Respondents duly interposed objections to the introduction of said testimony upon the ground that it was incompetent, irrelevant and immaterial, hearsay as to the respondents and not binding upon them, no authority having been shown from any of the respondents to any of said persons. The Trial Examiner erroneously overruled said objections and permitted the introduction of said testimony to which respondents duly excepted and do hereby except (Tr. p. 1883, ll. 13 to 25, p. 1887, ll. 17 to 20).

Respondents hereby incorporate herein and restate Exception No. 54 with the same effect as if fully set forth herein.

The statement that O. W. Busby is head mechanic in the machine shop and is a supervisory employee, and the further statement that Hubbard, Brenes, and Roberson were the only ones nominated for the respective positions to which they were elected, is contrary to the evidence.

The evidence affirmatively establishes that the meeting held by the employees on November 28, 1938, was the first real organization meeting of the employees' association, as the employees who had previously met on the evening of November 18, 1938, just discussed the possibility of organizing an employees' union of their own (Tr. p. 1920). The evidence also shows without dispute that the organization meeting of November 28, 1938, was held under the guidance and instructions of Attorney Clark Clement, of Lemoore, California, who was not connected in any way with any of the respondents and was employed by the members of the association for the purpose of advising them relative to the formation of the association, and to prepare the constitution and bylaws. Eugene Clark Ely, who was a witness for the Board, testified that he became a member of the Independent and continued to be a member for some time but later joined Prior's union. He testified that the attorney from Lemoore was present at the meeting and made quite a long speech, although he did not recall all that the attorney said (Tr. p. 1888).

The undisputed evidence also shows that the Boswell Company never made any financial contribution whatsoever to the Independent (Tr. p. 1943); that all finances of the Independent were and are derived from members through initiation fees and monthly membership dues (Tr. p. 1942); that the constitution and bylaws adopted at the meeting of November 28 (Board's Exhibit No. 18) were prepared by Attorney Clement, who was paid for his services with funds of the Association, and that the officers of the Association were elected by secret ballot (Tr. p. 1970).

It is stated in the above mentioned finding that Hubbard, Brenes, and Roberson were the only ones nominated for the respective positions to which they were elected. The undisputed evidence shows however that there were two candidates for the office of treasurer to which Mr. Brenes was ultimately elected (Tr. p. 1971) by secret ballot.

The undisputed evidence also shows that 77 employees attended the organization meeting of November 28, 1938 (Tr. p. 1943) and that subsequent to that date and prior to about May 1, 1939, 23 additional members joined the association (Tr. p. 1944-5).

The respondents, and each of them, specify the foregoing as Exception No. 110.

Exception No. 111.

Respondents, and each of them, hereby except to the whole of Finding No. 97, page 48 of the Intermediate Report, upon the ground that said Finding

is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents and upon the ground that said Finding is unsupported by any competent and credible evidence, and upon the further ground that there was no authority shown from respondent Boswell Company to either Roberson or Tom Hammond to in anywise act or speak for it with respect to any of the matters or alleged conversations referred to in said Finding, or to bind it in any way.

The respondents at the time of the hearing objected to the introduction of testimony by Eugene Clark Ely with respect to what occurred at the meeting of the employees held on the evening of November 18, 1938, upon the ground that such testimony was incompetent, irrelevant, and immaterial, and hearsay as to the respondents, not binding upon them, no authority having been shown from any of the respondents to any of the persons present at that meeting to speak for them with regard to any matter under investigation in this proceeding. The trial examiner erroneously overruled this objection and an exception was duly taken thereto. It was later stipulated that the same objection would run to this entire line of testimony (Tr. p. 1883). When the witness was asked to state what occurred during the second meeting held November 28, 1938, it was stipulated that the same objection would apply. These objections were erroneously overruled by the Trial Examiner and exceptions were duly taken thereto (Tr. p. 1887). Thereafter the wit-

ness testified, among other things, that he received a card from Roberson notifying him of the meeting and he testified to the alleged conversation with Tom Hammond mentioned in the above finding.

The respondents, and each of them, hereby except to the above mentioned rulings of the Trial Examiner, and each of them, upon all of the grounds above stated which were urged in support of the objections.

The respondents, and each of them, specify all of the foregoing as Exception No. 111.

Exception No. 112.

Respondents, and each of them, hereby except to Finding No. 98, page 48 of the Intermediate Report, upon the ground that said Finding is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and upon the ground that said Finding is unsupported by any competent and substantial evidence.

Respondents duly interposed objections to the questions calling for the testimony upon which said Finding is based, upon the ground that said questions called for hearsay and incompetent testimony which was not binding upon respondents. The Trial Examiner erroneously overruled said objections and erroneously permitted the introduction of said testimony to which respondents duly excepted (Tr. p. 1883, lines 13 to 25, p. 1887, lines 17 to 20).

Respondents incorporate herein and restate Exception No. 54 with the same effect as if fully set forth herein.

The evidence affirmatively shows that none of the men mentioned in said Finding had any authority from respondents, or any of them, to act for or on behalf of respondents, or any of them, in respect to any of the matters referred to in said Findings, or any other matters under investigation in this proceeding.

The statement in said Finding that Busby, Hubbard, Tom Hammond, Joe Hammond, Brenes, Wiloughby, and Lloyd are all supervisory employees, is a mere conclusion of the Trial Examiner and is not supported by the evidence, and is contrary to the evidence.

The respondents, and each of them, specify the foregoing as Exception No. 112.

Exception No. 113.

Respondents, and each of them, hereby except to Finding No. 99, page 48 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the competent evidence and is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents.

Respondents duly interposed objections to the questions calling for the testimony upon which said Finding is based. Said objections were predicated upon the ground that said questions called for hearsay and incompetent evidence. The Trial Examiner erroneously overruled said objections and permitted the introduction of said testimony to which respon-

dents duly excepted (Tr. p. 1919, lines 19 to 23, p. 1922, line 21, to p. 1923, line 17).

Respondents hereby incorporate herein and restate Exception No. 54 with the same effect as if fully set forth herein.

The evidence fails to show any authority conferred by respondents, or any of them, upon Tom Hammond, Joe Hammond, Hubbard or McKeever, or any of them, or any other employee, except Louis Robinson and Gordon Hammond, to speak or act for or on behalf of respondent Boswell Company, or any of the respondents, in any of the matters involved in this proceeding. The evidence shows that the only persons authorized to speak for respondent Boswell Company were Gordon Hammond or Louis T. Robinson, and that neither of said persons was a member, or at any time attended any of the meetings of the Independent, or participated in the proceedings of the Independent, in any manner or to any extent whatsoever.

Furthermore, the evidence does not show that any alleged supervisory employee or employees of the Tipton plant were members of the Independent.

The evidence further shows, without dispute or contradiction, that the Independent had a number of committees—membership, social, nominating, and financing committee in addition to Labor Relations Committee (Tr. p. 1937). The undisputed evidence also shows that at the election which was held April 5, 1939, Bill Nichols, who is a carpenter employed at an hourly rate, was elected Vice President (Tr.

p. 1932); William Overstreet, who works at the gin in the Tipton plant, but comes to Corcoran during the slack season in the summer, was elected to the Labor Relations Committee (Tr. p. 1934); Bruce Clark, who is an electrician employed at the Corcoran plant, and Sam Robinson, who is employed as a ginner at the Corcoran plant during the ginning season, but does miscellaneous work around the plant during the slack season, were also both elected on the Labor Relations Committee.

Respondents, and each of them, specify the foregoing as Exception No. 113.

Exception No. 114.

The respondents, and each of them, hereby except to Finding No. 100, pages 48 and 49 of the Intermediate Report, upon the ground that certain of the statements therein contained which are hereinafter referred to are not supported by the evidence, and upon the further ground that the evidence with respect to certain of the matters therein referred to is not fully or accurately stated in the respects hereinafter mentioned.

The evidence shows that on November 29, 1938, the Independent wrote a letter to the J. G. Boswell Company at Los Angeles, notifying the company of the organization of the independent and stating the names of its officers (Board's Exhibit No. 27), as follows:

“Corcoran, California

November 29, 1938

“J. G. Boswell Company
354 South Spring Street
Los Angeles, California

“Gentlemen:

“Please take notice that at 7:00 P. M. November 28, 1938, at the American Legion Hall in Corcoran, California, seventy-eight employees of the J. G. Boswell Company at Corcoran organized themselves into an employees’ association under the National Labor Relations Act and unanimously adopted a constitution and by-laws by which they are to be governed. This constitutes about 95% of the Corcoran employees.

“The following officers were elected and constitute the governing board of the association:

President—J. W. Hubbard

Vice President—O. W. Busby

Secretary—E. M. Roberson

Treasurer—S. F. Brenes

“Labor Relations Board

R. B. Lloyd

W. F. Willoughby

H. G. McKeever

Very truly yours,

J. G. BOSWELL CO. EMPLOY-
EES’ ASSN.

J. W. HUBBARD, President

E. M. ROBERSON, Secretary”

Brenes testified the writing and sending of the above letter was authorized at a meeting of the Governing Board of the Independent on November 29, 1938, and a copy thereof was set forth in the minutes (Tr. 1946).

The evidence also shows that at a special meeting of the Governing Board of the Independent, held on January 11, 1939, the Board authorized and directed that a letter be forwarded to the National Labor Relations Board at Los Angeles, California (Tr. p. 1949). A copy of said letter was set forth in the minutes of such meeting (Tr. p. 1949). Said letter was read into evidence, (Tr. p. 1954). Said letter read as follows:

“Corcoran, California

“January 11, 1939

“National Labor Relations Board

“Twenty-First Region

“610 South Main Street

“Los Angeles, California

“Gentlemen:

“We understand that the American Federation of Labor is pretending to represent the employees of the J. G. Boswell Company of Corcoran and Tipton, California.

“Please be advised that more than 95 per cent of the employees are members of the J. G. Boswell Company Employees' Association of Corcoran and Tipton, which was organized November 28, 1938, under the National Labor Re-

lations Act, with constitution and by-laws which you are invited to inspect.

"We want no interference on the part of the American Federation of Labor. Our members are of the unanimous opinion that their purposes can best be served through the local organization without outside interference.

"Very truly yours,

"J. G. BOSWELL COMPANY
EMPLOYEES'

"ASSOCIATION OF
CORCORAN AND TIPTON

"Governing Board—"

The portion of the letter dated April 15, 1939, quoted in said Finding omits the first part of said letter which states that

"At the annual meeting of the J. G. Boswell Company Employees' Association on April 5, 1939, the question was raised . . ." (Board Exhibit No. 28).

Members of the Independent testified that although the Independent never demanded or insisted that the Company enter into a closed shop agreement, or other working agreement with the Independent, the Independent did put the Company on notice that it represented a majority of the employees, and that the Independent was looking after the interests of its members, and was claiming the right to bargain for them should occasion arise. All of the evidence showed that the Company never at any time denied the Independent the right to bargain on

behalf of its members, or the right to represent them in any way.

The portion of said Finding wherein it is stated that the letter therein quoted "is a mere gesture of an attempt to bargain on behalf of the Independent" is entirely unwarranted and unsupported by the evidence.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 114.

Exception No. 115.

Respondents, and each of them, hereby except to the whole of Finding No. 101, pages 49 and 50 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by evidence and upon the ground that no authority is shown from respondents, or any of them, to any of the men named in said Finding to speak or act for or on behalf of any of the respondents, and upon the ground that said finding is based solely upon hearsay and incompetent testimony.

Respondents hereby incorporate herein and restate Exception No. 54 with the same effect as if fully set forth herein.

Mr. Louis T. Robinson testified that no one in Corcoran, other than himself and Gordon Hammond, has authority to employ or discharge any employee (Tr. p. 2165), and that they are the only ones at the Corcoran plant who are authorized to speak for the Company with respect to any employment matters (Tr. p. 2394). Also that they are the only ones in the Corcoran plant who are

authorized to speak for the company with respect to any matter concerning its business (Tr. p. 2395), and that there is no one else at the Corcoran plant, other than himself and Mr. Hammond, who has any authority at all to bind the Company (Tr. p. 2396); that there is no one at the Corcoran plant, other than himself and Mr. Gordon Hammond, who has authority from the Boswell Company to employ or discharge any of the employees. That this authority originally came from the head office and has been in practice there for a period of years (Tr. pp. 2396-7). This testimony was not denied.

It is stated in said Finding that "these same individuals" (referring to Busby, Hubbard, Tom Hammond, Brenes, Willoughby, Lloyd, and Joe Hammond) are officers and direct the activities of the Independent. The evidence shows that this is a gross misstatement of the facts, as the evidence showed without dispute that neither Tom Hammond nor Joe Hammond were at any time officers of the Independent, and there is no evidence whatever which would even indicate that they, or either of them, directed the activities of the Independent. The evidence also showed without dispute that, although, at the organization meeting of November 28, 1938, Hubbard, Busby, and Brenes were elected as officers and Lloyd and Willoughby were elected on the Labor Relations Committee (Tr. pp. 1923-31), they served only about four months, and on April 5, 1939 an entirely new set of officers, as well as members of the Labor Relations Committee, were

elected, with the exception of Brenes, who was retained as Treasurer, and Willoughby, who was elected President (Tr. pp. 1932-35).

The evidence also shows without dispute that practically all of the officers and all of the men who were elected to serve on the Labor Relations Committee at the election of April 5, 1939, were men who worked at the plant on an hourly wage basis and were representative of the rank and file of the membership of the Independent (Tr. pp. 1932-5).

It is also stated in said Finding, among other things,

“that the respondent Boswell Company has interfered with, dominated and aided in the formation and administration”

of the Independent. There was absolutely no evidence to support such a finding.

The respondents, and each of them, specify all of the foregoing as Exception No. 115.

Exception No. 116.

Respondents, and each of them, hereby except to the whole of Finding No. 102 upon the grounds that said Finding is irrelevant to any of the issues in this case, that the matters therein stated are of no probative value in this case, that said Finding is based solely upon hearsay testimony and that no authority was shown from any of the respondents to any of the parties mentioned in said Finding to act or speak for or on behalf of any of the respondents in regard to any of the matters mentioned therein, or in regard to any of the matters involved in this

proceeding, and the ground that said finding does not accurately state the evidence relating to the matters therein mentioned.

Respondents duly interposed objections to the questions calling for the testimony of Prior in relation to the matters therein stated and moved to strike the portion of said testimony, upon the ground that said questions called for hearsay and incompetent evidence which was not binding upon respondents or any of them. The Trial Examiner erroneously overruled said objections and permitted the introduction of said testimony and denied said motions to strike to which respondents duly excepted (Tr. p. 148, lines 5 to 8; p. 149, lines 4 to 12; p. 150, lines 4 to 6; p. 151, lines 4 to 7; p. 152, lines 3 to 6).

It is stated in said Finding, among other things, that on January 21, 1939, Prior and Ely had a conference with the District Attorney regarding the law of California as to the use of pickets and the number that might be stationed at the Boswell plant. There was absolutely no evidence whatever to support parts of such statement. The testimony shows that Prior told the District Attorney he and Ely had called on him for a conference to determine the nature of the picketing ordinances of Kings County (Tr. pp. 148), and that the only law discussed was this Kings County ordinance.

Neither Prior nor the District Attorney testified that, during this conference, or at any other time, the number of pickets that might be stationed at the Boswell plant was discussed. The District At-

torney testified that he believed Prior explained the method which he was operating under, and he told Prior he could see nothing wrong with the method that was being used, that so long as his men were not on private property but were on public right of way, and while they were they didn't have a sufficient number to interfere with people going and coming along that right of way, and so long as he didn't have cars that were interfering with traffic along the right of way, and so long as they didn't use threats or force, that he was not violating the ordinance (Tr. p. 180).

It is also stated in said Finding that the connection was made and the chief of Police of Corcoran, through an inter-office communication system in connection with the Telephone Exchange at Corcoran, listened in to the whole conversation. The evidence shows that this is a gross misstatement of the testimony. Prior, when testifying relative to the fact that the Chief of Police in Corcoran was listening over the telephone to the conversation between Prior and the District attorney, stated as follows:

“Apparently there was a hook up on an inter-office communication system in connection with the telephone exchange between the District Attorney's office and Sheriff's office, and the Chief of Police here in Corcoran.” (Tr. p. 146).

District Attorney Walch, in testifying to this particular matter stated as follows:

“At the meeting in my office when the ordi-

nance was read to Mr. Prior, I spoke to Mr. Prior and told him that I thought it would be a very excellent idea if I got the Chief of Police of Corcoran on the wire and . . . so that he could listen in on the conference between Mr. Prior and myself so that when I gave my interpretations of the ordinance and the law to Mr. Prior, Mr. Springer would hear it first hand, and there would be no misunderstanding between the three of us. . . . I called Mr. Springer at his home . . . and asked him to stay on the wire while Mr. Prior and I talked back and forth about the situation. And everything I told Mr. Prior was heard by Mr. Springer." (Tr. p. 205).

The respondents, and each of them, specify all of the foregoing as Exception No. 116.

Exception No. 117.

Respondents, and each of them, hereby except to the whole of Finding No. 103, pages 50 and 51 of the Intermediate Report, upon the ground that said Finding is irrelevant to any of the issues of this case, and upon the ground that certain portions hereinafter specified do not fully and accurately state the testimony with respect to the matters therein stated.

District Attorney Walch testified that when the picketing first started, shortly following the conference with Mr. Prior about January 21, 1939, he went down to Corcoran to look things over. He saw

Mr. Prior there and they talked about the picketing, and Mr. Walch then went over to the Boswell office and talked with Mr. Louie Robinson. He told him that the picketing, the manner in which it was being conducted, was lawful. Mr. Robinson said, "We have no fault to find with the way it is being conducted." "We don't want any trespass." (Tr. pp. 207-8).

The respondents, and each of them, specify the foregoing as Exception No. 117.

Exception No. 118.

Respondents, Associated Farmers and Corcoran Telephone Exchange, hereby except to the whole of Finding No. 103, pages 50 and 51 of the Intermediate Report, upon the ground that it is based solely upon hearsay and incompetent testimony and upon the ground that no authority was shown from said respondents, or either of them, to any of the parties mentioned in said paragraph to speak or act for or on behalf of either of said respondents.

Said respondents, and each of them, hereby specify the foregoing as Exception No. 118.

Exception No. 119.

Respondents, and each of them, hereby except to Finding No. 104, page 51 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter designated are contrary to and unsupported by any evidence, and upon the further ground that said Finding incorrectly and incompletely sets forth the evidence relating to the matters mentioned therein.

It is stated in said Finding, among other things, that "on January 23, 1939, at a legally called a meeting of Local 21798, a vote was taken and it was voted to place pickets. . . ." The record shows that this is a misstatement of fact, as Prior himself testified that the matter of picketing was discussed at a meeting of union members in the evening of January 21, 1939, which meeting was held in Prior's hotel room in Corcoran. That in addition to Prior there were present at this meeting Spear, Powell, Johnston, Martin, Wingo, and Andrade (Tr. p. 150). Prior testified that at this meeting he explained the reasons why picketing had not been previously instituted, but testified:

"We felt that it would be necessary to place the pickets down there and make the boycott still more effective. And the members of the organization present voted to take that action."

The evidence shows that the institution of picketing was voted by only six members of the Union. There was no evidence whatever to show that the meeting at which this vote was taken was a legally called meeting.

On cross-examination, Prior was asked to state what, if any, requirement is contained in the constitution and by-laws of the American Federation of Labor, so far as a quorum of union membership necessary to authorize picketing is concerned, and replied that this is a matter which is left strictly to the local autonomy of all local unions. He was then asked whether, in the case of this particular

Local, any rule or custom had been adopted with respect to the number of members necessary to constitute a quorum to authorize picketing. Prior stated there had been no definite rule set up with regard to that matter by the Local pertaining to picketing. That those matters are just taken care of the same as any other routine business of the organization. That the only rule they have in any local union is the rule pertaining to the calling of a strike. (Tr. pp. 437-40).

The evidence shows very clearly that the vote on picketing was taken at merely an informal meeting of only a few of the Union members.

The following portion of said Finding No. 104, to-wit:

“at this phase of the labor trouble at the Boswell plant the Associated Farmers stepped into the picture and their efforts towards organization and the part they played in this matter is hereinafter discussed as follows”

is contrary to and unsupported by any competent evidence. No competent or credible evidence was introduced which showed or tended to show that respondent, Associated Farmers, “stepped into the picture” or exerted any “efforts toward organization,” as referred to in said Finding, or otherwise.

The respondents, and each of them, specify all the foregoing as Exception No. 119.

Exception No. 153.

Respondents, and each of them, hereby except to the whole of Finding No. 137, page 71 of the Inter-

mediate Report upon the ground that said Finding is contrary to and unsupported by the evidence, and upon the ground that the evidence fails to show that respondents, or any of them, are engaged in interstate commerce within the meaning of the National Labor Relations Act and fails to show that respondents, or any of them, are within the jurisdiction of the National Labor Relations Board.

Respondents and each of them, hereby specify the foregoing as exception No. 153.

Exception No. 165.

The respondents, and each of them, hereby except to the following portion of Finding No. 147, page 76 of the Intermediate Report, to-wit:

“in 1926, she, Mrs. Dunn, was promoted to head operator, and in fact, by Glenn’s own admission managed the Exchange for him”,

upon the ground that said portion of said Finding is not supported by the evidence and is contrary to the evidence.

The undisputed evidence shows that although the Exchange was incorporated in 1923, Mr. Glenn did not become the majority stockholder and president and general manager until about September 12, 1926 (Tr. p. 2878); that the Exchange operates only within the city limits of Corcoran, which is a city of about 2,000 population (tr. 1987); and that during the year and one-half period immediately preceding March 1, 1939, it employed only six operators, including Mrs. Dunn and also including Mr. Woodruff (tr. 2819). However, Mr. Woodruff’s

principal job was that of lineman and repairman (tr. 2828 and 2900), and he spent only a part of his time in the office (tr. 2902).

The undisputed evidence also shows that although the running of the operators was left largely to Mrs. Dunn as head operator, the business part of the exchange was taken care of by a man who was employed as bookkeeper (Tr. 2886-8); that each one of the employees had their place in the organization, and that Mr. Glenn generally supervised the whole thing.

The respondents, and each of them, specify the foregoing as Exception No. 165.

Exception No. 166.

Respondents, and each of them, hereby except to the whole of Finding No. 148, page 76 of the Intermediate Report, and to every portion thereof, upon the ground that said finding is contrary to and unsupported by the evidence, and is irrelevant to any issue in the proceeding; and upon the ground that the matters stated in said Finding are based entirely upon hearsay and incompetent testimony which was erroneously introduced over the objection of said respondents; and upon the ground that no evidence was introduced which showed or tended to show any connection between respondents or any of them and the matters referred to in said finding, or any authority conferred by respondents or any of them upon any person mentioned in said Finding to in any way act, speak for or represent the respond-

ents, or any of them, with respect to any matter referred to in said Finding.

Immediately prior to the introduction of the testimony upon which said Finding is based, respondents, and each of them, duly objected to the reception of any evidence in support of the charge involving respondent Exchange, upon the ground that there had been no service upon any of the respondents of the charge filed by Mrs. Dunn with the Board on March 14, 1939, and upon the further grounds that no authority was shown from Mrs. Dunn to Prior to file the Fourth amended charge herein; and upon the further ground that there had been no proof of the jurisdiction of the Board over respondent Exchange. The Trial Examiner erroneously overruled said objection and erroneously permitted the introduction of such testimony to which respondents, and each of them, duly excepted and do hereby except (Tr. p. 1058).

No evidence was introduced relating to the identification of Secord, other than the testimony of Dorothy Dunn that Secord was an employee of the Boswell Company (Tr. p. 1064), and there was no evidence whatsoever to show that he was in anywise authorized by said respondents, or any of the respondents, to make any of the alleged statements to Dorothy Dunn on behalf of any of the respondents or to in any wise bind any of the respondents with respect to any of the matters involved in this proceeding.

The witness was also asked to state the conversa-

tion which allegedly took place with Secord in the house after Mr. Sprecher left. The respondents objected thereto on the ground it called for hearsay and was not binding upon any of the respondents, and incompetent, irrelevant and immaterial. This objection was erroneously overruled by the Trial Examiner and an exception duly taken thereto (Tr. p. 1065). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The respondents, and each of them, specify all of the foregoing as Exception No. 166.

Exception No. 167.

Respondents, and each of them, hereby except to the whole of Finding No. 149, pages 76 and 77 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence, and is irrelevant to any issue in the proceeding; and upon the ground that the matters stated in said Finding are based entirely upon hearsay and incompetent testimony which was erroneously introduced over the objection of said respondents; and upon the ground that no evidence was introduced which showed or tended to show any connection between respondents or any of them and the matters referred to in said Finding, or any authority conferred by respondents, or any of them, upon any person mentioned in said Finding to in any way act, speak for or represent the respondents, or any of them, with respect to any matter referred to in said Finding.

The following portion of said Finding, to-wit:

“Secord told Dorothy that she was very much in the wrong with the people of Corecoran; that she had been seen at the picket line and that many of the employees of the Boswell Company had seen her there and were very much worked up over the fact that she had been at the picket line, and as she testified, that ‘I should apologize to W. W. Boswell for he was very angry at the fact that I had been seen there’ ”

is based solely on hearsay evidence which was erroneously introduced over the objection of respondents. As pointed out in Exception No. 166 (Exception to Finding No. 148) the evidence failed to show any authority conferred upon Secord to speak for any of the respondents. At the time said testimony was introduced, respondents duly interposed an objection thereto upon the ground that said evidence was hearsay and incompetent, irrelevant and immaterial and not shown to be authorized by or connected with any of the respondents. The Trial Examiner erroneously overruled said objection and permitted said testimony to be introduced, to which respondents duly excepted and do hereby except (Tr. p. 1069).

Furthermore, said entire Finding and also preceding Finding No. 148 is based entirely upon the incompetent, irrelevant hearsay testimony of Dorothy Dunn, which testimony was erroneously admitted in evidence by the Trial Examiner over the repeated objections of each of the respondents.

Upon the conclusion of Dorothy Dunn's testimony, all of the respondents moved to strike the entire testimony. The respondents Boswell Company and Associated Farmers moved to strike such testimony upon the grounds previously stated in support of their objection to the introduction of such testimony and upon the further ground that there was no jurisdiction shown by the record in the board over either of said respondents, and upon the further ground that there was no allegation in the complaint that either of said respondents acted in the interests of the Exchange or came within the definition of employer under the Act. The motion of respondent Telephone Exchange to strike such testimony was upon the grounds stated before the introduction of the testimony, that there was no showing of any jurisdiction by the Board over said respondent, that such testimony was incompetent, irrelevant and immaterial and had no bearing on the case and did not tend to prove or disprove any of the issues, so far as the respondent Telephone Exchange was concerned. Both of these motions was denied by the Trial Examiner and an exception taken (Tr. pp. 1075-6). The respondents, and each of them, hereby except to the denial of said motions upon the grounds above stated, which were urged in support of such motions.

The following testimony, although erroneously admitted, is pertinent in considering the credibility of Dorothy Dunn and her mother, Margaret A. Dunn:

Dorothy Dunn testified she first met Sprecher on the bus while coming from Los Angeles to Corcoran about February 1, 1939 (Tr. pp. 1070-2). However, her mother Margaret A. Dunn stated in the sworn charge which was filed with the National Labor Relations Board at San Francisco against the Exchange, March 14, 1939, and the jurat of which was dated March 13, 1939, that "the accusations came because my daughters were talking to Mr. Prior, a labor organizer. They, however, were receiving a personal message through Mr. Prior from Drexel Sprecher, a National Labor Relations Board attorney, who one of my daughters met in Los Angeles long before there was any labor trouble in Corcoran." (Board's Exhibit No. 1-q). Mrs. Dunn admitted that the reference in the above quoted portion of the Charge to one of her daughters referred to Dorothy Dunn (tr. 2062). Dorothy Dunn also testified that after coming to Corcoran she received a letter from Mr. Sprecher and about February 8 she stopped at the picket line at the Boswell Plant and spoke to Prior about this letter, and they discussed a few personal things about her knowing Mr. Sprecher (Tr. pp. 1066-7). This fact supports the statement made by her mother that she (Dorothy Dunn) had met Sprecher long before any labor trouble at the Boswell plant arose.

Dorothy Dunn also testified that she did not know Prior before the time she met him at the bus station in Corcoran on February 1, 1939 (tr. 1063). However, she also testified that she introduced Mr.

Sprecher and Prior to each other (tr. 1064). Upon cross examination she denied having given any such testimony (tr. 1073).

She testified on direct examination that while talking with Mr. Prior at the picket line on February 8, 1939, they talked about "the Boswell strike" (Tr. p. 1067). However, upon cross-examination she denied that anything was said about a "strike" and stated they were not talking about the strike (Tr. pp. 1073-4).

The evidence affirmatively shows that Dorothy Dunn never talked to W. W. Boswell or Mr. Glenn about matter referred to in said Finding (Tr. pp. 1071-2).

The respondents, and each of them, specify all of the foregoing as Exception No. 167.

Exception No. 168.

Respondents, and each of them, hereby except to the whole of Finding No. 150, page 77 of the Intermediate Report, upon the ground that said Finding is unsupported by any competent evidence in this case and is based solely upon unsupported hearsay evidence erroneously introduced over the objection of respondents.

The evidence failed to show any authority conferred upon any of the persons referred to in said Finding to speak for or on behalf of any of the respondents. At the time this testimony was introduced respondents duly interposed objections to said testimony upon the ground that it was hearsay and not binding upon any of the respondents, and

respondent Associated Farmers objected upon the additional ground that there was no connection shown between said respondent and any of the persons present at the alleged conversation between Mrs. Dunn and Galusha. The Trial Examiner erroneously overruled all said objections and permitted the introduction of said testimony to which respondents duly excepted and do hereby except (Tr. p. 2024, line 23; p. 2025, line 4; p. 2025, lines 17 to 20; p. 2026, lines 9 to 13).

Furthermore, the statement in said Finding to the effect that Mrs. Dunn had heard that a petition had been "circulated and given to Glenn" is not even supported by the incompetent hearsay testimony upon which said Finding is based. Mrs. Dunn's testimony was that she told Galusha she understood a petition had been circulated "to get" Mr. Glenn to relieve her in her work (Tr. p. 2025).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 168.

Exception No. 170.

Respondent Exchange hereby excepts to the whole of Finding No. 151, page 77 of the Intermediate Report, upon the ground that said Finding is not supported by any substantial evidence, and is against the weight of the evidence.

Said respondents, and each of them, also hereby except to the following portion of said Finding, to-wit:

"They talked about the labor trouble at the Boswell plant and on that point Glenn told Mrs.

Dunn, that because of the labor trouble the men were worked up over the situation and that any little thing that might take place would cause a lot of trouble in town.”

upon the ground that said portion of said Finding does not fully or completely state the testimony of Mrs. Dunn with respect to the matter therein mentioned. Mrs. Dunn’s testimony with respect to this matter was as follows:

“He told me about the labor trouble . . . Well he just told me that, what everybody else knew in town that there had been a disturbance and that the men were just all worked up over the situation, and that any little thing that would take place just might cause an awful lot of disturbance in town.” (Tr. p. 2029).

Said Respondent hereby specifies the foregoing as Exception No. 170.

Exception No. 171.

Respondent Exchange hereby excepts to Finding No. 152, page 77 of the Intermediate Report, upon the ground that certain portions of said Finding, hereinafter designated, are based solely upon hearsay and incompetent testimony, erroneously introduced over the objections of respondent Exchange, and are unsupported by, and are contrary to, the evidence.

It is stated in said Finding that at 8:00 o’clock on the morning of February 16, Dunn called Glenn and requested that he come to her home. Mrs. Dunn’s

testimony with respect to this matter was that after February 16, she again talked with Mr. Glenn on Saturday morning of that same week, which would be February 18, 1939, and not February 16, as stated in said Finding (Tr. p. 2029).

It is stated in said Finding that:

“Glenn agreed and when he reached the Dunn home, told Mrs. Dunn that he had talked to Forrest Riley and Riley had informed him that he (Riley) knew about the men coming to see him about the discharge of Mrs. Dunn.”

This statement is not only unsupported by, but is directly contrary to, the evidence. Mrs. Dunn testified that upon the occasion referred to she told Mr. Glenn of a conversation that had been repeated to her by Mr. Galusha concerning this affair (Tr. p. 2030). She told Mr. Glenn that Mr. Galusha had told her (Tr. p. 2030) that he, Galusha, had talked to Forrest Riley about this affair (Tr. p. 2031), and that Galusha had said that Forrest Riley told him he (Riley) knew about this meeting with these men and that Bill Boswell told him (Riley) that he (Boswell) would get her job if it was the last thing he did; that he (Boswell) was going to put detectives and a dictaphone in her home and have the girls watched to prove their point; also that he (Boswell) said he had no objection to her work or anything about her but they were not going to tolerate having any of them associating with the pickets (Tr. p. 2033).

The record clearly shows that at the meeting above

referred to Mrs. Dunn was repeating to Mr. Glenn a conversation which she had had with Mr. Galusha, in which Mr. Galusha had told her what Mr. Riley had told him, Galusha, regarding a conversation which Riley purportedly had with W. W. Boswell, and that when Mrs. Dunn repeated her conversation with Galusha to Mr. Glenn she was repeating to him alleged conversations some of which were as much as four or five times removed.

W. W. Boswell, when called as a witness, categorically denied having made any such statements to Mr. Riley, or any on else. (tr. 2780). His testimony was not denied. Furthermore, the evidence shows that although Forrest Riley was called to the stand as a witness on behalf of the Board during the course of the hearing he was not asked anything at all regarding the alleged conversation with Mr. Galusha, and there was no evidence to in any way substantiate any of the alleged conversations testified to by Mrs. Dunn, aside from her alleged conversation with Mr. Glenn. It is clear from the evidence that the statement contained in the above mentioned Finding to the effect that Mr. Glenn told Mrs. Dunn of a conversation which he had with Forrest Riley is a gross misstatement of the record.

The record shows that Mrs. Dunn's entire testimony is replete with contradictory and inconsistent statements, and that her testimony is not entitled to any weight as against the direct and positive statement of Mr. Glenn and other witnesses who testified in support of the respondent Exchange. The

entire lack of credibility of her testimony is illustrated by the following instances (in addition to the other instances hereinabove referred to in Exception No. 167 to Finding No. 149):

Mrs. Dunn testified on direct examination that she had a conversation with Mr. Glenn on each of the following dates to wit, on or about February 16, 1939, (Tr. p. 2027), one on Saturday morning of that same week, which would be February 18, 1939 (Tr. p. 2029), one on March 1, 1939 (Tr. p. 2033), and a telephone conversation on the morning of March 2, 1939 (Tr. p. 2035). However, upon cross-examination, she testified that her second conversation was on March 1, (Tr. p. 2075), she was positive it was on March 1 (Tr. p. 2077). Upon again being asked to fix the date of the second conversation she again testified positively that it was March 1 (Tr. p. 2079). This testimony is substantiated by the testimony of Mr. Glenn, who testified that he talked with Mrs. Dunn about the middle of February 1939, when he went to her home and saw her at her request (Tr. p. 2838), and that the next time he talked with Mrs. Dunn regarding her work was March 1, 1939, which conversation was held at the telephone office (Tr. p. 2841).

When asked upon cross-examination if she had heard about there being some disturbance at the Boswell plant in November 1938, she stated "Yes; I don't remember" (Tr. p. 2064), but finally admitted when pressed that she had heard the talk around town from time to time concerning the Boswell situation ever since it existed (Tr. p. 2065).

On cross-examination, Mrs. Dunn was asked how long it was before she took the stand that morning that she last talked with anyone concerning her testimony in the case (Tr. p. 2079) and she replied, "Well, I don't know". She was then asked if she had gone over her testimony with Board's counsel, and was forced to admit that she had gone over the matter with one of the Board's attorneys the previous night (Tr. p. 2080).

On direct examination, Mrs. Dunn testified that it was during her conversation of February 16, 1939, with Mr. Glenn that leakage of information over the board was mentioned (Tr. p. 2027), but on cross-examination she testified that the conversation during which complaints against her were discussed was the conversation of March 1 (Tr. pp. 2077-9).

Respondent Exchange hereby specifies all of the foregoing as Exception No. 171.

Exception No. 174.

Respondents Exchange hereby excepts to Finding No. 154, pages 78 and 79, of the intermediate Report, upon the ground that said Finding does not accurately or completely state the evidence with respect to the matters therein referred to.

Glenn testified that about the middle of February 1939, Mrs. Dunn had called him to her home saying she wanted to talk to him. When he got there she asked him if he had heard anything about a petition that was being circulated. He asked her what the petition was. She said it was a petition to get her discharged because her daughters had gone down

to the gin (tr. 2838). He told her that he had not heard anything about any petitions of that kind, that she needn't worry—then she went on to say that the girls had talked the morning before about the pickets being in down to the gin and she asked them why they didn't go down there and see. The girls had said they hadn't seen any pickets before, how it was worked, so she had advised them to go down there and see. He told her the fact of a petition being circulated could have no bearing at all “on our plant”, he couldn't take cognizance of that because the exchange was a public service corporation and must keep neutral in everything of that kind. He then went on and testified, substantially as set forth in the questions and answers shown in the said Finding, but, in addition thereto, he also testified that when Mrs. Dunn mentioned the matter was the first he had heard anything about a petition being circulated and was also the first he had heard anything whatsoever concerning Mrs. Dunn's daughters being seen talking to the pickets (tr. 2840).

Said respondent specifies all the foregoing as Exception No. 174.

Exception No. 175.

Respondent Exchange hereby excepts to Finding No. 155, page 79 of the Intermediate Report, upon the ground that said Finding does not accurately or completely state the evidence, with respect to the matters therein referred to.

Mr. Glenn's testimony with respect to the conversation in question was substantially as follows:

He testified that about 8:00 o'clock on the morning of March 1, 1939, Mr. Woodruff, who was the husband of one of the operators who had been employed at the Exchange for many years, came to his (Glenn's) office in the bank building, and told him Mrs. Woodruff had decided to resign her position (tr. 2846). Mrs. Woodruff had also advised him that she was going to quit (tr. 2845). Glenn then went to the telephone office and called Mrs. Dunn into the back office and told her that Mrs. Woodruff had informed him that she had made every effort to get along with Mrs. Dunn, but found it impossible to do so, and that she wanted to quit. He told Mrs. Dunn that on account of her physical condition and use of liquor that was so offensive to the girls, that he wanted her to resign. She told him that she couldn't resign; that she simply had to work; that she would go out and apologize to the girls and make every effort to get along (tr. 2843). After Mr. Glenn had talked with Mrs. Dunn in the morning, he went out to his ranch and when he came back about 2:00 o'clock that afternoon, Mrs. Dunn ran past him sobbing hysterically as he entered his office. (tr. 2847). When he entered the office he noticed that the faces of the other operators were white and they were very much distraught (tr. 2848). He then went on in to the back office, and while he was sitting there the phone rang and it was Mrs. Dunn calling him. She asked if he would come to the house and talk to her, and he told her that he did not want to talk to her any more at that time, and would not go out to her

house, that he thought the best thing for her to do was to stay at home and rest. She then asked if he was going to let her come back, and he told her he did not know, that he would let her know later (tr. 2847-8).

Said respondent specifies all the foregoing as Exception No. 175.

Exception No. 176.

Respondent Exchange hereby excepts to Finding No. 156, pages 79 and 80 of the Intermediate Report, upon the ground that certain of the matters therein referred to and hereinafter designated are not supported by the evidence and are contrary to the evidence and do not fully or completely state the evidence.

Mr. Glenn's testimony, with respect to the matters referred to in said Finding, was substantially as follows:

He testified that in the last part of January 1939, he called Mrs. Dunn into the back office and told her that Albert Armor of the Boswell Company had complained that she was running around nights with Fred Galusha, and they objected very strenuously because Fred Galusha was superintendent of the Anderson-Clayton Gin company and since she was handling their intimate business calls over the phone they objected to her running around with a competitor very much (Tr. p. 2832); that Mr. Armor had made this complaint to Mr. Glenn on the morning of the same day he (Glenn) talked with Mrs. Dunn (Tr. p. 2833). She told Mr. Glenn that she did not

consider it was anybody else's business what she did on her own time, and he told her that so far as the personal element was concerned it was none of his business, but so far as the business element was concerned he was going to make it his business and if that thing was going to continue he wanted her to resign. She cried and told him she was very sorry he felt that way about it, and he assured her that she must stop the thing because of the slips that were possible, and she assured him she would stop. He also spoke to her about the dissension that was going on in the office, told her that the girls were complaining and that this dissension in the office would have to stop (Tr. pp. 2833-4). Mr. Glenn testified that Albert Armor, at the time of complaining about Mrs. Dunn running around with Galusha, had mentioned there had been a leak of information through the Board a couple of years before, and that through that leak one of the Boswell Company's customers had lost a very valuable concession, and Mr. Armor stated if there were any more leaks they felt they should hold the telephone company responsible (Tr. p. 2835).

It is apparent from the foregoing recital of Mr. Glenn's testimony that many of the material portions of such testimony were entirely omitted from said Finding, and that the Trial Examiner placed an improper construction upon, and incorrectly stated, said testimony.

Respondents Exchange hereby specifies the foregoing as Exception No. 176.

Exception No. 178.

Respondent Exchange hereby excepts to the following portion of Finding No. 157, page 80 of the Intermediate Report, to wit:

“The undersigned asked Glenn the following questions:

“Q. Did you blame Mrs. Dunn for that leak?

“A. No, sir.”

upon the ground that said portion of said Finding does not fully state the evidence with respect to the matter referred to.

Mr. Glenn testified that the reason he did not blame Mrs. Dunn for that leak was because Mr. Armor, at the time of mentioning the matter, did not say who was to blame for the leak, but merely stated a leak of information across the switchboard of the Exchange had occurred a couple of years previously (Tr. p. 2835-6).

Respondent Exchange also hereby excepts to the remaining portion of said Finding No. 157, which refers to crossed cables, upon the ground that said portion of said Finding is not supported by the evidence and is contrary to the evidence and does not accurately or fully state the evidence with respect to the matters therein referred to.

Mr. Glenn's testimony with regard to said matters was substantially as follows:

Mr. Glenn was asked by Board's counsel if in the past he had received complaints regarding the fact that wires became crossed and conversations switched to different people than those for whom

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they were intended. Mr. Glenn explained, in response to this question, that the cable, which is a mass of telephone wires inside, has an outer casing which is composed of lead, and that the cable is supported by rings. He stated that sometimes, due to wind action, these rings wear through the outer casing on the bottom of the cable and result in a contact being formed between the ring and the wires inside the cable, and that when this condition occurs it results in a crossed talk, and it is very difficult to locate this type of trouble; that sometimes it is necessary to look for quite a while before the trouble can be located, and if it cannot be located, then the cable is cut out. He stated that this condition happens right along, and it is necessary to change the rings right along. He also stated that this condition depends largely upon the action of the wind; that when the wind is blowing it has a tendency to hold the cables in a position where the ring makes a contact with the inside wires, but when the wind is not blowing the cable goes back into place and the contact is broken. He stated that the difficulty in locating the worn places on the cable is because the wind action makes and breaks the contact with the wires (Tr. pp. 2883-5).

It is clear from the foregoing recital of Glenn's testimony that there was no evidence to support the statement contained in said Finding either that cables crossed, or that when the rings wore through the cable and contacted the wires inside that others could take up the receivers and hear conversations between parties even though they were on a differ-

ent line. Furthermore there was no evidence that the leak of information over the switchboard complained of by Albert Armor to Mr. Glenn, and which leak had occurred about two years prior to January 1939, was in anywise the result of crossed talk either by reason of the wearing through of the cables due to the natural action of the elements or otherwise.

Respondents Exchange hereby specifies the foregoing as Exception No. 178.

Exception No. 179.

Respondent Exchange hereby excepts to the whole of Finding No. 158, page 80 of the Intermediate Report, upon the ground that the evidence with respect to the matters referred to is not fully stated.

Mr. Glenn testified that although complaints had been received about Mrs. Dunn prior to a year and a half before March 1, 1939, there was not an unusual amount, but commencing about a year and a half immediately prior to March 1, 1938, the complaints about her increased in frequency (Tr. p. 2808). Some of the parties in addition to those named in said Finding who complained to him about her were Kenneth Betell, a pump man and farmer, John Kanst, a dairyman and farmer, Marion Phillips, of the San Joaquin Light & Power Corporation, Bill Mink, a truckman, T. K. Brown, and a number of others. He testified that during this last mentioned period the complaints about her were coming in right along (Tr. pp. 2809-11).

Respondent Exchange specifies all the foregoing as Exception No. 179.

Exception No. 181.

Respondent Exchange hereby excepts to the whole of Finding No. 160, page 81 of the Intermediate Report, upon the ground that the evidence with respect to the matters referred to in said Finding is not fully or accurately stated.

It is stated in said Finding that Mr. Glenn admitted that he had had numerous complaints against other operators, and that there was never a year without complaints both against the operators and because of poor service.

Such statement is contrary to and misstates the testimony. There was absolutely no evidence that Mr. Glenn ever had numerous complaints either against his other operators or against the service rendered by the Exchange. This is clearly shown by his testimony, which was substantially as follows:

Mr. Glenn, when asked by the Trial Examiner, if he had ever had any complaints against his other operators, testified

“We always have some complaints” (Tr. p. 2889). When asked by the Trial Examiner concerning complaints against the service, Mr. Glenn testified they had had complaints but don’t have many complaints about the service when the lines are kept up (Tr. p. 2890), that there hadn’t been so many complaints about the service in the last year—maybe a dozen (Tr. p. 2891).

Mr. Glenn also testified that during the fall of 1938—from the first of July to the end of the year

he had received more complaints regarding the service rendered by Mrs. Dunn than against that rendered by any of his other operators (Tr. pp. 2893-4).

The undisputed evidence also shows that on the morning of March 1, 1939 Mr. Glenn asked Mrs. Dunn to resign, and she herself admitted on cross examination that on this occasion Mr. Glenn mentioned the complaints he had received about her and suggested that in view of her illness and these complaints that she should give up her position and asked her to resign (Tr. pp. 2077-8). She also admitted on cross examination that she had been seriously ill for about three years, and during the year immediately preceding March 1 she had been in pain from time to time while working on the job, and had mentioned that fact to the other operators as well as to Mr. Glenn (Tr. pp. 2069-70).

The facts with respect to Mrs. Dunn's physical condition were also substantiated by the testimony of Mr. Glenn, who testified that about a year before Mrs. Dunn was discharged there was a noticeable change in the manner in which she was performing her duties at the Exchange. She had to brace herself with a pillow when sitting at the Board, and was nervous, and started to drink liquor, and there were times when she would go to work she would have to put on a relief operator and go home (Tr. pp. 2806-7). This testimony was not denied by Mrs. Dunn, except that she denied having drank liquor on the job. She admitted, however, that several

months prior to March 1 she had told Mr. Glenn that she had to take four glasses of Port wine a day for her health (Tr. p. 2082).

Respondent Exchange hereby specifies all of the foregoing as Exception No. 181.

Exception No. 182.

Respondent Exchange hereby excepts to Finding No. 161, page 81 of the Intermediate Report, upon the ground that the statements therein contained are not supported by the evidence and are contrary to the evidence, and upon the further ground that the said Finding does not fully or accurately state the evidence with respect to the matters therein referred to.

The record shows that there was nothing in Mr. Glenn's testimony which in any wise warranted, either expressly or impliedly the statement contained in said finding:

“that he admitted that he talked to practically all the business men in Corcoran about the labor trouble . . . but did not talk to a single farmer regarding the matter”.

His testimony with regard to the matters referred to in said Finding was substantially as follows:

Mr. Glenn testified that the basis for his statement to Mr. Dunn that the whole community was in a jitter was from his own observations and from conversations that he had heard (Tr. p. 2873). He was then asked to state the names of a few with whom he had such conversations, or the names of

people who engaged in conversations that he heard. He then named J. W. Guiberson of the bank, R. P. Williams, who runs a grocery store, Fred Carroll of the Light and Power Company, Mr. Maroot, who owns a grocery store, Dick Hart, who is Mr. Glenn's partner in his office, and stated that they were all talking, it was just common talk. He stated, however, that he had never talked about this subject with Mr. Boyett (Tr. p. 2874). Continuing his testimony, he stated he had also talked with Earl Lewis, of the Farmers Lumber Company, George Cutter, of the Cutter Milling Company, Lyle Weir of the Corcoran Milling Company, that "it was just the topic of conversation around".

When asked if he talked with any farmers about that subject, he stated

"Well, I don't remember that I did, Mr. Mouritsen, I wouldn't *said* I didn't".

he was then asked if it was not correct that he testified earlier that he talked with practically everyone in the community about the matter at that time, and he replied

"No, I was just talking in general when I was talking that time, just in generalities, Mr. Mouritsen. Maybe I covered a lot of territory, but believe me, it was pretty strong feeling among those I did talk to". (Tr. p. 2876).

He was again asked if he did not recall having discussed the matter with a farmer, and he replied

"I would not say that, Mr. Mouritsen, at all, no. I wouldn't say that I hadn't."

He then testified he had discussed the matter with Louis T. Robinson, but didn't remember discussing it with the farmers much. (Tr. p. 2877).

It is clear from the testimony that Mr. Glenn did not testify that he talked to practically all the business men in Corcoran about the labor trouble, nor did he deny that he ever talked to a single farmer in that vicinity about the matter, and that the two statements contained in said Finding to such effect are a gross misstatement of the evidence, and that the statement contained in said Finding that

“it is evident that Glenn withheld information during the giving of his testimony regarding important facts pertaining to this case and that his testimony is greatly reduced in value”

is not supported by any evidence.

Respondent Exchange hereby specifies all the foregoing as Exception No. 182.

Exception No. 185.

Respondent Exchange hereby excepts to Finding No. 162, pages 81 and 82 of the Intermediate Report, upon the ground that said Finding incompletely and inaccurately states the testimony referred to in said Finding, and upon which said Finding is based, as hereinafter set forth:

Blakeley Crary testified that he had lived in Corcoran since 1930 and had been cashier of the First National Bank of Corcoran since the bank was organized, July 21, 1934 (Tr. p. 2894). In said finding this date was stated as July 1, 1934, which is contrary to the evidence.

He testified that prior to that time he was assistant cashier of the old First National Bank of Coreoran, and when it was closed he was assistant conservator of the old bank. He testified he had known Mrs. Dunn ever since he had been in Coreoran and been with the bank; that the bank had two trunk lines and four telephones in the bank; that he also had a telephone in his own home, and that he recognized Mrs. Dunn's voice over the telephone (Tr. p. 2895).

It is stated in said Finding that

“in January 1939, when Glenn was in his bank he said he told Glenn that he had attended a dinner a short time prior . . .”.

This statement is contrary to the evidence, as Mr. Crary, when asked to state where this conversation took place, stated it was in Mr. Glenn's office (Tr. p. 2896).

After the examination of Mr. Crary had been completed by both counsel, the Trial Examiner took over the examination and Mr. Crary testified, in response to the Trial Examiner's questions, that he used the phone a great deal, something like twenty or thirty times a day and that he never had any complaints to make against anyone except Mrs. Dunn (Tr. pp. 2898-9). Upon further cross examination by Board's counsel, he testified that Mrs. Dunn was on duty part of the time when he used the phone, and although he did not know whether she was the day or night operator he knew he recognized her voice when she was on and he had found her on the day time and also in the evening (Tr. p. 2899).

Respondent Exchange hereby specifies all the foregoing as Exception No. 185.

Exception No. 186.

Respondent Exchange hereby excepts to Finding No. 163, page 82 of the Intermediate Report, upon the ground that said Finding incompletely and inaccurately states the testimony referred to in said Finding, and upon which said Finding is based, as hereinafter set forth:

As pointed out in the Exception No. 185 to Finding No. 162, above, Mr. Crary testified that he had known Mrs. Dunn since 1930; that in addition to the two trunk lines and four telephones which are installed in the bank, he also has a home telephone and recognizes Mrs. Dunn's voice over the telephone, and although he did not know whether she was the day or night operator, he did know that he recognized her voice when she was on and had found her on in the daytime and also in the evening. Mr. Crary's testimony was not denied, and, in fact, Mrs. Dunn herself admitted that upon at least one occasion she had had some words with Mr. Crary about the placing of one of his calls while she was on duty (Tr. p. 2073).

Respondent Exchange hereby specifies all the foregoing as Exception No. 186.

Exception No. 188.

Respondent Exchange hereby excepts to Finding No. 164, page 82 of the Intermediate Report, upon the ground that said Finding incompletely and in-

accurately states the testimony referred to in said Finding and upon which said Finding is based, as hereinafter set forth:

Mr. Dunn admitted on cross-examination that although his home is in Corcoran he does not live there continuously but travels up and down the pipe line and only comes home whenever he has an opportunity (tr. 2101); that when he got home on the evening of March 1, 1939, he found his wife crying. She was practically in hysterics, and he tried to find out what was the matter and she wasn't feeling in any condition to tell him, she said Mr. Glenn had asked her to resign and he told her he was going to find Mr. Glenn and find out what it was all about, and he then sought out Mr. Glenn to get the particulars of the case.

Respondent Exchange hereby specifies all of the foregoing as Exception No. 188.

Exception No. 190.

Respondent Exchange hereby excepts to Finding No. 165, pages 83 and 84 of the Intermediate Report, upon the ground that the statements therein contained are not supported by the evidence, and are contrary to the evidence in the respects herein-after set forth; and upon the further ground that the evidence with respect to the matters referred to in said Finding is incompletely and inaccurately stated.

It is stated in said Finding that on the morning of March 3, Glenn picked up Dunn in front of his office and they had an alleged conversation. The un-

disputed testimony shows that this alleged conversation was held March 2, 1939, and not March 3, 1939.

Mr. Dunn testified that when he talked with Mr. Glenn on March 2, Mr. Glenn said he had sent for Mr. Dunn because he wanted to correct an impression that he knew Dunn had the evening before, that Dunn thought the Boswell people were bringing pressure to bear on him to discharge his wife. That Glenn said he wanted to let Dunn know that was not so, that he was discharging his wife for her own good, that she was getting along in years and was nervous and highstrung, and he didn't think on account of her health she ought to be working down there at the telephone office (Tr. p. 2098). In said Finding certain portions of the alleged conversation purported to be quoted from the record, but a comparison with the record shows these portions are misquoted. For instance, the following quotation appears in said Finding: "I laughed at them and a couple of days three of these men came to me, met me on the street corner and demanded that I do something about this." This testimony, as it appears in the record, reads as follows: "I laughed at them, and a couple of days ago three of these same men came to me again, met me on the street corner, and demanded that I do something about this." (Tr. p. 2100).

Mr. Dunn, when testifying to this conversation of March 2, also testified that Glenn made the following statements: "I went into the Exchange the

other day and I met your wife coming out of the door, she was half crying. I went on in and Lillian Fowler was crying at the Board." "I just can't stand that stuff." (tr. 2100).

Mr. Dunn's testimony shows that the matter of the alleged petition to have Mrs. Dunn discharged was discussed during the conversation of March 2, and Mr. Dunn said that several friends of theirs had told them a petition had been circulated. When asked, upon cross-examination, to name the friends referred to he testified that they were Mrs. Botts and Roy Filcher, that was all he could remember, and admitted that both of these people were mere acquaintances and not friends.

It is stated in said Finding, among other things, that "When asked by Mr. Clark whether or not the first thing he said to Mr. Dunn on that occasion was in substance or effect this 'You know there has been trouble, labor trouble at the Boswell gin' Glenn answered that he did not remember". This statement as it appears in the Finding is ambiguous, and appears to relate to the conversation of March 2, whereas, the evidence shows that it related to the alleged conversation of March 1 between Mr. Dunn and Mr. Glenn (tr. 2854-6 and 2866). Furthermore, Mr. Glenn had previously testified on direct examination with respect to the conversation of March 1, as follows, "Well, Mr. Dunn asked me what I was—what I was doing with his family and I told him that I—that it was his family, and that he would have to answer that himself", and it is clear from

the testimony that there was no inconsistency between his statements on direct and cross-examination.

It is also stated in said Finding that Glenn admitted that he had the conversation with Dunn on March 2, in substance as Dunn related it. This statement is not supported by the evidence and is contrary thereto.

Although Mr. Glenn admitted he had a conversation with Dunn on March 2, 1939, he did not in anywise admit that said conversation was in substance as related by Dunn. In this respect attention is called to Glenn's testimony (Tr. pp. 2863 to 2864).

Mrs. Dunn admitted on cross-examination that there had been plenty of occasions where she had had words with customers in addition to the time she had words with Mr. Crary, but claimed she did not have any more arguments and disputes with other customers of the Exchange than any other operator (tr. 2073-4).

Although Mrs. Dunn denied having drank liquor on the job, and also denied having kept any liquor in or about the Telephone Exchange office, Mr. Woodruff, who was employed as a lineman and repairman by the Exchange, and whose duties required him to go in and out of the office every day, testified that sometime during 1938 he saw a bottle of Port wine sitting on the ice box in the rear of the operating room, and a glass was sitting beside the bottle. Mr. Glenn asked him whose it was, and

he replied he did not know. After Mr. Glenn had left the office, Mr. Woodruff asked Mrs. Dunn why she had left it there, and she stated she forgot to put it away. (tr. 2902-4). He also saw some empty bottles in the ice box, but did not know who they belonged to. Upon another occasion in 1938, Mr. Woodruff saw part of a bottle of wine underneath the counter in the operating room. Mrs. Dunn told him she had been to see the doctor and the doctor had prescribed it for her as nourishment because she couldn't eat any food (tr. 2904). He also testified that on various occasions he smelled the odor of wine on Mrs. Dunn's breath while she was on duty in the office (tr. 2905-6).

He also testified that at times he saw Mrs. Dunn take a drink of wine while on duty, particularly on the morning she said she had been to see the doctor (tr. 2912).

Mr. Woodruff also corroborated Mr. Glenn's testimony that he had told Mr. Glenn, during the latter part of February, 1939 at his office in the Bank building, that Mrs. Woodruff was thinking of quitting because of the trouble she had been having with Mrs. Dunn. He stated that on the morning of this conversation when he went in to the office he found his wife crying, and asked her what was the matter, and she said she and Mrs. Dunn had had a misunderstanding. Mr. Woodruff then went to Mr. Glenn and asked him to investigate the matter, and if his wife was in the wrong to discharge her (tr. 2907-8).

The entire evidence shows that Mrs. Dunn was

discharged solely because of her ill health, inefficient service, complaints which were made regarding her services by numerous subscribers, her offensive habit of drinking wine while on duty, and the dissension which she created among the other employees in the office and that such discharge was not in anywise attributable to the labor trouble at the Boswell gin, or because of any suspected union activities as charged in the complaint in this case. Both Mrs. Dunn and her husband testified positively that she was not a member of any labor organization, and had never assisted or attempted to assist any labor organization in any manner (tr. 2105-6), and particularly that she was not a member of any labor organization with which Mr. Prior was connected and had not in many manner assisted or attempted any such labor organization (tr. 2108-9).

Respondent Exchange hereby specifies all the foregoing as Exception No. 190.

Exception No. 192.

Respondents, and each of them, hereby except to Finding No. 166, page 85, of the Intermediate Report, upon the ground that the Dunn charges therein mentioned were never served upon any of the respondents, and could not form the basis for this proceeding, and that such charges are incompetent, irrelevant, and immaterial, and were erroneously admitted in evidence over the objections of respondents (Tr. p. 34). Respondents duly excepted to the admission of said charges in evidence, and do hereby except thereto.

Respondents, and each of them, hereby specify the foregoing as Exception No. 192.

Exception No. 193.

Respondents, and each of them, hereby except to the whole of Finding No. 167, page 85, of the Intermediate Report, upon the ground that said Finding is based solely upon incompetent hearsay testimony erroneously introduced over the objections of respondents, and upon the further ground that there was no authority shown from any of the respondents to Forrest Riley to in any way act or speak for or bind the respondents, or any of them, with respect to any of the matters referred to in said Finding.

At the time of the hearing, the respondents, and each of them, objected to the introduction of the testimony by Mrs. Dunn regarding her alleged conversation of March 21, 1939, with Mr. Riley, upon the ground that it was incompetent, irrelevant, and immaterial and hearsay as to all respondents, no authority having been shown from any of the respondents to Mr. Riley to speak for them with respect to any matters under investigation in this proceeding. This objection was erroneously overruled by the Trial Examiner and an exception duly taken thereto (tr. 2037). It was also stipulated that such objection might be deemed to run to this entire testimony (Tr. p. 2039). The respondents, and each of them, hereby except to such ruling on all of the grounds above stated which were urged in support of their objection.

The respondents, and each of them, specify all of the foregoing as Exception No. 193.

Exception No. 194.

Respondents, and each of them, hereby except to the whole of Finding No. 168, pages 85 and 86 of the Intermediate Report, upon the ground that said Finding is based solely upon hearsay and incompetent testimony erroneously introduced over the objections of respondents, and upon the ground that said Finding is unsupported by the evidence, and upon the further ground that there was no authority shown from any of the respondents to either Russell Slaybaugh or Boyett to in anywise act or speak for them with respect to any matters under investigation.

It is stated in said Finding, among other things, that Slaybaugh did not deny Mrs. Dunn's testimony. However, during the course of the hearing the Board called Slaybaugh as one of its witnesses, but did not examine him regarding his alleged conversation with Mrs. Dunn, or in anywise endeavor to corroborate her incompetent hearsay testimony with regard to this conversation.

Furthermore, there was absolutely no showing in the evidence that Slaybaugh was in anywise authorized by any of the respondents to represent or act for them with respect to this or any other matter involved in the proceeding.

At the time of the hearing, respondents, and each of them, objected to the introduction of any testimony by Mrs. Dunn respecting the alleged con-

versation with Slaybaugh upon the ground that it was hearsay, incompetent, irrelevant and immaterial as to all respondents. This objection was erroneously overruled by the Trial Examiner and exception was duly taken thereto (Tr. p. 2043). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of their objection.

It is stated in said Finding that Mrs. Dunn's testimony respecting her alleged conversation with Boyett was not denied by Boyett. However, during the course of the hearing, the Board called Boyett as one of its witnesses, but did not examine him regarding his alleged conversation with Mrs. Dunn, or in anywise endeavor to corroborate her incompetent hearsay testimony with regard to this conversation.

At the time of the hearing, respondents, and each of them, objected to the introduction of any testimony by Mrs. Dunn respecting the alleged conversation with Boyett, upon the ground that it was hearsay as to all respondents. This objection was erroneously overruled by the Trial Examiner and exception was duly taken thereto (Tr. p. 2045). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of their objection.

Said incompetent hearsay testimony relating to Mrs. Dunn's alleged conversation with Boyett is inaccurately and incompetently stated in said Finding. Mrs. Dunn testified that she had known Mr.

Boyett for about seventeen years (Tr. p. 2085); that he had been a rather good friend to her in a business way over quite a period of years, and she had confidence in him (Tr. p. 2086); and that he had merely come to her home at her request, and told her that he would attempt to use such influence as he had to get her job back (Tr. p. 2087). She stated that Mr. Boyett was merely trying to help her (tr. p. 2086).

The evidence affirmatively shows that the telegram which was sent by Mrs. Dunn to the Board's regional office in San Francisco on March 21, 1939. (Board's Exhibit No. 21) was sent by her of her own free will and accord, and not at the instigation or request of any of the respondents, or as the result of any action on the part of the respondents.

The respondents, and each of them, specify all of the foregoing as Exception No. 194.

Exception No. 195.

The respondents, and each of them, hereby except to Finding No. 169, page 86 of the Intermediate Report, upon the ground that the letter therein referred to (Board's Exhibit No. 22), was hearsay as to all respondents, and not in anywise binding upon them, and upon the further ground that the evidence with respect to said letter is not fully or accurately stated.

The evidence affirmatively shows that said letter was written and sent by Mrs. Dunn of her own accord; that the writing and sending thereof was not the result of any suggestion or action on the part

of the respondents, or any or either of them, and the writing and sending thereof was not authorized by said respondents, or any or either of them.

The respondents, at the time of the hearing, objected to the introduction in evidence of the letter referred to in said Finding upon the ground that it was incompetent, irrelevant, and immaterial and hearsay as to all respondents, and also self serving. This objection was erroneously overruled by the Trial Examiner and the letter was admitted in evidence as Board's Exhibit No. 22, and the respondents duly excepted thereto (Tr. p. 2047). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of their objection.

The respondents, at the time of the hearing, also objected to testimony by Mrs. Dunn relating to said letter, upon the ground that it was self serving. This objection was erroneously overruled by the Trial Examiner and an exception taken thereto (tr. 2048). Respondents, and each of them, hereby except to such ruling upon the grounds above stated.

The respondents, and each of them, specify all of the foregoing as Exception No. 195.

Exception No. 196.

The respondents, and each of them, hereby except to Finding No. 170, page 86 of the Intermediate Report, upon the ground that the letter therein referred to is hearsay as to all respondents, and is not in any wise binding upon them, and upon the fur-

ther ground that there was no evidence which would establish or tend to establish that such letter was written either at the instigation or request of any of the respondents, or that the writing thereof was authorized by any of the respondents.

The evidence affirmatively shows that said letter was written by Mrs. Dunn of her own free will and accord.

The respondents, at the time of the hearing, objected to the introduction in evidence of the letter set forth in said Finding upon the ground it was incompetent, irrelevant, and immaterial and hearsay as to all respondents. This objection was erroneously overruled by the Trial Examiner and the document admitted in evidence and an exception was duly taken thereto (Tr. p. 2054). The respondents, and each of them hereby except to such ruling upon the grounds above stated which were urged in support of their objections.

The respondents, at the time of the hearing, objected to the introduction of testimony by Mrs. Dunn regarding an alleged conversation with Mr. Galusha on or about April 12, 1939, on the ground that such testimony was incompetent, irrelevant, and immaterial, and hearsay as to all of the respondents (Tr. p. 2049). It was stipulated that such objection was deemed to run to the entire conversation (Tr. p. 2050). The Trial Examiner erroneously overruled the objection and an exception was duly taken thereto (Tr. p. 2049). The respondents, and each of them, hereby except to such ruling upon the grounds above stated.

The respondents, at the time of the hearing, also objected to the introduction of testimony by Mrs. Dunn regarding an alleged conversation with Mr. Boyett, on or about April 14, 1939, upon the ground that such testimony was hearsay as to all of the respondents, and incompetent, irrelevant and immaterial, no authority having been shown to Mr. Boyett from any of the respondents to take part in this affair. This objection was erroneously overruled by the Trial Examiner and an exception was duly taken thereto (Tr. p. 2051). The respondents, and each of them, hereby except to such ruling upon the grounds above stated.

While the witness (Mrs. Dunn) was testifying to the alleged conversation of April 14, 1939, with Mr. Boyett, she was asked the following question by Mr. McTernan, "What did he say—did he say the same thing that Mr. Galusha had said the night before?" This question was objected to upon the same grounds above stated which were urged in support of the objection to her testimony regarding the conversation with Mr. Boyett. The Trial Examiner erroneously overruled the objection and an exception with duly taken thereto (Tr. p. 2053). The respondents, and each of them, hereby except to such ruling upon all the grounds above stated which were urged in support of the objection.

The respondents, at the time of the hearing, objected to the introduction of testimony by Mrs. Dunn regarding the notarization of her signature on the letter set forth in said Finding, and as to the mail-

ing of said letter, upon the ground that such testimony was incompetent, irrelevant, and immaterial and hearsay. It was stipulated that this objection was deemed to run to that entire line of testimony. The Trial Examiner erroneously overruled the objection and an exception was duly taken thereto. (Tr. p. 2055). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The respondents, and each of them, specify all of the foregoing as Exception No. 196.

Exception No. 197.

Respondents, and each of them, hereby except to the following portion of Finding No. 171, page 87 of the Intermediate Report, to wit:

“there is considerable proof that members of the Associated Farmers brought pressure to bear upon Mrs. Dunn to withdraw her charges filed against the Corcoran Telephone Exchange because of her discharge”

upon the ground that said portion of said Finding is unsupported by and contrary to the evidence.

There is no evidence that any member or members of respondent Associated Farmers, or any other person, brought any pressure to bear upon Mrs. Dunn to withdraw her charges.

Respondents, and each of them, hereby specify the foregoing as Exception No. 197.

Exception No. 198.

Respondents, and each of them, hereby except to the whole of Finding No. 172, page 87 of the Intermediate Report, upon the following grounds, to wit:

(a) That said Finding is not supported by any evidence and is contrary to the evidence;

(b) That there was no showing that respondent Boswell Company was within the jurisdiction of the Act or of the Board, and there was no showing that any act or activity of said respondent Boswell Company involved in this proceeding was in "commerce" within the meaning of Section 2 (6) of the Act, or affected "commerce" within the meaning of Section 2 (7) of the Act;

(c) That said Intermediate Report does not contain any section numbered IV, (C).

Respondents, and each of them, hereby incorporate herein, as though stated herein in full, all of the exceptions to all Findings regarding alleged activities referred to in said Finding No. 172.

Respondents, and each of them, specify the foregoing as Exception No. 198.

Exception No. 200.

The respondents, and each of them, hereby except to Finding No. 173, pages 87 and 88 of the Intermediate Report, and every part and portion of said Finding, upon the ground that said finding is not supported by any evidence and that all of said finding is contrary to the evidence.

Respondents, and each of them, hereby reincorporate herein, as though stated herein in full, all

of the exceptions to all Findings relating to all of the matters mentioned in said Finding No. 173.

Respondents, and each of them, hereby specify the foregoing as Exception No. 200.

Exception No. 201.

The respondents, and each of them, hereby except to Finding No. 174, page 88 of the Intermediate Report, and every part and portion of said Finding, upon the ground that said Finding is not supported by any evidence and is contrary to the evidence and upon the further ground that there was no showing that respondent Boswell Company is within the jurisdiction of the Act or of the Board.

Respondents, and each of them, hereby reincorporate herein, as though stated herein in full, all of the exceptions to all Findings relating to all of the matters mentioned in said Finding No. 174.

Respondents, and each of them, hereby specify the foregoing as Exception No. 201.

Exception No. 202.

The respondents, and each of them, hereby except to Finding No. 175, page 88 of the Intermediate Report, and every part and portion of said Finding, upon the following grounds, to-wit :

(a) That said Finding is not supported by and is contrary to the evidence ;

(b) That there was no showing that respondent Boswell Company is within the jurisdiction of the Act or of the Board ; and

(c) There was no showing that any act or ac-

tivity of said respondent Boswell Company involved in this proceeding was in "commerce" within the meaning of Section 2 (6) of the Act, or affected "commerce" within the meaning of Section 2 (7) of the Act.

Respondents, and each of them, hereby reincorporate herein, as though stated herein in full, all of the exceptions to all Findings relating to all of the matters mentioned in said Finding No. 175.

Respondents, and each of them hereby specify the foregoing as Exception No. 202.

Exception No. 207.

Respondents, and each of them, hereby except to Finding No. 178, page 89 of the Intermediate Report, and every part and portion of said Finding, upon the following grounds, to-wit:

(a) That said Finding is not supported by any evidence and is contrary to the evidence;

(b) That there was no showing that respondent Exchange was within the jurisdiction of the Act or of the Board, and there was no showing that any act or activity of said respondent Exchange was in "commerce" within the meaning of Section 2 (6) of the Act, or affected commerce within the meaning of Section 2 (7) of the Act;

(c) There was no showing that respondent Boswell Company was within the jurisdiction of the Act or of the Board, and there was no showing that any act or activity of said respondent Boswell Company involved in this proceeding was in "commerce" within the meaning of Section 2 (6) of the

Act, or affected commerce within the meaning of Section 2 (7) of the Act; and

(d) That there was no showing that Margaret A. Dunn, who was the sole and only employee of respondent Exchange involved in this proceeding, came within any of the provisions of the Act or that she was in any way entitled to any of the benefits or remedies conferred by the Act.

Respondents, and each of them, hereby reincorporate herein, as though restated herein in full, all of the exceptions to all Findings relating to all of the matters mentioned in said Finding No. 178.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 207.

Exception No. 208.

Respondents, and each of them, hereby except to Finding No. 179, page 89 of the Intermediate Report, and to every part and portion of said Finding, upon all of the grounds specified in Exception No. 207, which grounds and all thereof are hereby incorporated herein with the same effect as if restated herein in full.

Respondents, and each of them, specify the foregoing as Exception No. 208.

Exception No. 211.

Respondents, and each of them, hereby except to the whole of Finding No. 181, page 89 of the Intermediate Report, upon the ground that said Finding is unsupported by any evidence, and is contrary to the evidence, and upon the further ground that

there is no showing that any of the respondents are within the jurisdiction of the Act or of the Board, all of which has been more particularly set forth and shown in the exceptions to previous Findings.

Respondents, and each of them, specify the foregoing as Exception No. 211.

Exception No. 213.

Respondent Boswell Company hereby excepts to every portion of the Intermediate Report and the record herein which relates in any way to any act or activity, or to any alleged act or activity of respondent Exchange, upon the ground that said portions of the Intermediate Report and record are, as to respondent Boswell Company, incompetent, irrelevant, and immaterial, no authority having been shown or established from said respondent Boswell Company to said respondent Exchange, or to any of its officers, agents, or employees, to in any way act or speak for or on behalf of said respondent Boswell Company with respect to any of the matters involved in this proceeding.

Said respondent also hereby excepts to every portion of the Intermediate Report and the record herein relating in any way to any conversations, or alleged conversations, in conjunction with any act or activity, or alleged act or activity of respondent Exchange, upon the ground that said portions of the Intermediate Report and record are hearsay and incompetent as to said respondent Boswell Company, no authority having been shown or established from said respondent Boswell Company

to said respondent Exchange, or to any of its officers, agents, or employees, to in any way act or speak for or on behalf of said respondent Boswell Company with respect to any of the matters involved in this proceeding.

Respondent Boswell Company hereby specifies the foregoing as Exception No. 213.

Exception No. 216.

Respondent Exchange hereby excepts to every portion of the Intermediate Report and the record herein which relates in any way to any act or activity, or to any alleged act or activity of respondent Boswell Company, upon the ground that said portions of the Intermediate Report and record are, as to respondent Exchange, incompetent, irrelevant, and immaterial, no authority having been shown or established from said respondent Exchange to said respondent Boswell Company, or to any of its officers, agents, or employees, to in any way act or speak for or on behalf of said respondent Exchange with respect to any of the matters involved in this proceeding.

Said respondent also hereby excepts to every portion of the Intermediate Report and the record herein relating in any way to any conversations, or alleged conversations, in conjunction with any act or activity, or alleged act or activity of respondent Boswell Company, upon the ground that said portions of the Intermediate Report and record are hearsay and incompetent as to said respondent Exchange, no authority having been shown or estab-

lished from said respondent Exchange to said respondent Boswell Company, or to any of its officers, agents or employees, to in any way act or speak for or on behalf of said respondent Exchange with respect to any of the matters involved in this proceeding.

Respondent Exchange hereby specifies the foregoing as Exception No. 216.

Exception No. 217.

Respondent Exchange hereby excepts to every portion of the Intermediate Report and the record herein which relates in any way to any act or activity, or to any alleged act or activity of respondent Associated Farmers, upon the ground that said portions of the Intermediate Report and record are, as to respondent Exchange, incompetent, irrelevant, and immaterial, no authority having been shown or established from said respondent Exchange to said respondent Associated Farmers, or to any of its members, officers, agents, or employees, to in any way act or speak for or on behalf of said respondent Exchange with respect to any of the matters involved in this proceeding.

Said respondent also hereby excepts to every portion of the Intermediate Report and the record herein relating in any way to any conversations, or alleged conversations, in conjunction with any act or activity, or alleged act or activity of respondent Associated Farmers, upon the ground that said portions of the Intermediate Report and record are hearsay and incompetent as to said respondent Ex-

change, no authority having been shown or established from said respondent Exchange to said respondent Associated Farmers, or to any of its members, officers, agents, or employees, to in any way act or speak for or on behalf of said respondent Exchange with respect to any of the matters involved in this proceeding.

Respondent Exchange hereby specifies the foregoing as Exception No. 217.

Exception No. 218.

Respondents, and each of them, hereby except to the rulings of the Trial Examiner preventing respondents from eliciting testimony relating to the identity of members of the Union, and identity of persons present at union meetings, concerning which testimony was introduced by the Board, as is hereinafter more particularly set forth.

Although the charge and amended complaint in this case alleged that respondent Boswell Company was discriminating against employees, or former employees, solely because of their union membership, the Trial Examiner repeatedly refused to permit respondents to elicit testimony relative to the identity of the members of the Union who were working or had worked for said respondent.

After the Union charter had been introduced in evidence by the Board, the Trial Examiner erroneously sustained an objection, interposed by counsel for the Board, to the following question,

which was asked Prior (Tr. p. 99, line 24; p. 100, line 7):

“Q. (By Mr. Clark) Did those names, (referring to the names on the charter) in fact, constitute the entire membership of the Union on that day, namely, October 26, 1938?”

The Trial Examiner erroneously sustained an objection, interposed by counsel for the Board, to the following question (Tr. p. 366, line 18, to p. 367, line 8):

“Q. . . . is he (referring to Joe Briley) still a member in good standing of your union?”

The Trial Examiner erroneously sustained an objection, interposed by counsel for the Board, to the following question (Tr. p. 367, lines 10 to 14):

“Q. Is Mr. Briley a member of your organization?”

The Trial Examiner erroneously sustained an objection, interposed by counsel for the Board, to the following question (Tr. p. 371, lines 6 and 9):

“Q. Isn't he (referring to Joe Briley) a member now?”

The proceedings which occurred at a union organization meeting held by Prior on July 13, 1938, were stated at great length over respondent's objection in the direct examination of Prior, who was called as a witness by the Board. Prior named six persons whom he testified were present at that meeting. On cross examination he was asked how many

of those persons, if any, ultimately became members of his union. An objection to this question, interposed by counsel for the Board, was overruled by the Trial Examiner, and the witness was instructed to answer, after which the following transpired (Tr. p. 405, line 19, to p. 406, line 19):

“A. (Prior) Your Honor, I can’t answer that question.

Q. Why not?

A. Quite often in my work in organizing I give my word to those who make application for membership that I will not divulge their names or give any indication that an employer might be able to ascertain who belongs or who does not belong to the union.

Q. Well, is it your testimony then, Mr. Witness, that any of the persons present at that union meeting, aside from Mr. Gilmore, became members of it?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: I will withdraw that question and simply ask the Examiner if this witness is going to be permitted, in effect, to refuse to answer a question to which an objection has been overruled.

Mr. Mouritsen: Mr. Examiner, in that regard, the question is regarding an immaterial matter that can only be a very collateral issue and has no bearing upon the case. I interposed my objection then and I desire to renew it at this time.

Trial Examiner Lindsay: Well, in view of the fact that there is not an A (5) charge in this complaint, he does not have to answer the question if he wants to insist upon relying on his confidential relationship between the members and himself."

Counsel for the Board elicited, over objection of respondents, testimony relating in some detail to proceedings which occurred at a union meeting on November 16, 1938. On cross examination, Martin (the secretary and treasurer of the union), was asked to name the persons present at that meeting. He testified that he could recall only six persons whom he named, but that about 18 or 20 were present. He was then asked whether he, as secretary, kept a record of the people in attendance at the meetings and he stated that he kept such a record. Respondents then demanded the production of the record showing the identity of the persons who were present at and participated in that meeting. Counsel for the Board objected to the production of such record and the Trial Examiner erroneously ruled as follows (Tr. p. 556, line 10, to p. 557, line 23):

"Trial Examiner Lindsay: Well, I understand that the records of the union are the union records. The objection is sustained."

The Trial Examiner erroneously sustained an objection, interposed by counsel for the Board, to the following question relating to persons present at a union meeting on November 16, 1938 (Tr. p. 558, lines 11 to 16):

“Q. Now, of those people present at that meeting, were they all members of your union?”

Counsel for the Board introduced testimony regarding certain action, including the declaration of a boycott against respondent Boswell Company, which allegedly occurred at a union meeting on November 19, 1938. On cross examination Spear was asked what members of the union attended that meeting, and testified that most of them attended. He was then asked “can you name them for us?” and the Trial Examiner erroneously sustained an objection interposed by counsel for the Board to that question (Tr. p. 965, lines 9 to 18).

Andrade, on cross examination, was asked whether he obtained applications for union membership for certain named individuals, and he denied having signed up certain of the individuals named. He was then asked whether any of those persons, in fact, became members of the union, and the Trial Examiner erroneously sustained an objection interposed by counsel for the Board to that question (Tr. p. 1127, line 21, to p. 1128, line 23).

A notebook containing notations prepared by Martin was erroneously introduced in evidence for all purposes over the objections of respondents (Board’s Exhibit No. 17; Tr. p. 1750). One of the memoranda contained in such notebook set forth the names of certain persons under the headings, “Union members laid off before the lockout November 18, 1938” and “Union members forced off

the job November 18, 1938". On cross examination, Martin was asked whether those names constituted the entire membership of the union on that day and the Trial Examiner sustained an objection interposed by counsel for the Board to said question (Tr. p. 1753, line 24, to p. 1754, line 18).

The Trial Examiner erroneously sustained an objection interposed by counsel for the Board, to the following question (Tr. p. 1754, line 20, to p. 1755, line 5):

"Q. Is there any member of your union, or was there any person who belonged to your union on November 18, 1938, who was not either laid off prior to that time or forced off on that day?"

On cross examination, Martin was asked whether certain named persons who were still performing work for respondent Boswell Company had refused to take part in the boycott against said respondent, and the Trial Examiner erroneously sustained an objection interposed by counsel for the Board to said question. Some of the persons named in said question had been previously shown to be charter members of the union (Tr. p. 1756, lines 3 to 11).

Contrasted with the foregoing rulings of the Trial Examiner, he erroneously overruled objections by respondents to testimony by Prior relating to the objectives and purposes of the union. Respondents duly objected on the ground that the charter or by-laws was the best evidence of the objectives or purposes, and that Prior was not qualified to testify

since he was not a member of the union. The Trial Examiner also erroneously overruled a motion to strike out the testimony of Prior above referred to, upon the same grounds (Tr. p. 106, line 12, to p. 107, line 20).

Also, the Trial Examiner erroneously overruled objections interposed by respondents to testimony relating to the manner of electing Union officers and setting up the Union's constitution and bylaws, the committees of the Union, and the method of selection of members of committees. Respondents objected to the foregoing testimony upon the ground that the questions calling for this testimony were vague and indefinite, the employees referred to, or the members of the union, were not identified, and upon the ground that this proceeding concerned only employees of respondent Boswell Company (Tr. p. 108, line 3, to p. 109, line 15).

At the hearing, respondents excepted to each of the foregoing rulings and do hereby except thereto.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 218.

Exception No. 219.

Prior testified that one of his organizational activities consisted of the filing, on or about July 17, 1938, of an 8 (1) charge against respondent Boswell Company with the Board, and that this charge had been subsequently withdrawn in September or October 1938. The record shows that this charge was never served on any of the respondents; that it was apparently based solely upon alleged discrimination

against Gilmore; and that said charge was not offered or introduced in evidence by the Board at the time of the hearing, although certain other charges which were later filed with the Board but which were never served upon any of the respondents were admitted in evidence. Respondents, for the purpose of testing the credibility of Prior and comparing his previous sworn charge of July 18, 1938, with the later charges, demanded that either an original or copy of said charge be produced. The Trial Examiner erroneously sustained the objections interposed by Board's counsel to such demand (Tr. pp. 400-1, 410-11).

When Prior was asked to state what knowledge he had of conditions at the Boswell Company at the time he filed said charge, the Trial Examiner erroneously sustained an objection to said question (Tr. p. 401, lines 11 to 16).

Prior was then asked whether he had made an actual investigation of conditions at the Boswell plant at the time said charge was filed, and the Trial Examiner erroneously sustained an objection to said question (Tr. p. 402, lines 1 to 6).

Prior was asked by respondents to tell, in his own words, the substance of said charge, and the Trial Examiner erroneously sustained an objection interposed by counsel for the Board to said question (Tr. p. 427, line 25, to p. 428, line 7).

Prior was also asked to state by whose authority said charge was later withdrawn, and the Trial Examiner erroneously sustained an objection interposed by counsel for the board to said question (Tr. p. 488).

Respondents, and each of them, at the time of the hearing duly excepted to each of the foregoing rulings and do hereby except thereto.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 219.

Exception No. 221.

Upon the conclusion of the Board's alleged case against the Exchange, a motion was made on behalf of the Exchange to strike all of the testimony adduced on behalf of the Board purportedly in support of the complaint against the Exchange, upon the ground that the Board had no jurisdiction over the business or corporation in that it had not been shown that it is engaged in interstate commerce nor that the conduct of the business in any manner affects interstate commerce; and upon the further ground that there had been no showing in the case that Mrs. Dunn is a person who ever joined a labor organization or assisted one, or in any manner attempted to assist one, and that, therefore, she is not a person to whom the rights referred to in Section 7 of the Act was secured. This motion was taken under advisement by the Trial Examiner (Tr. p. 2918-19), and was denied in the Intermediate Report (line 11, page 7 of the Report).

Respondent Exchange hereby excepts to the denial of said motion and specifies such denial as Exception No. 221.

Exception No. 222.

Respondents, and each of them, hereby except to the erroneous rulings of the Trial Examiner ad-

mitting into evidence over the objections of said respondents the following specified exhibits, offered in evidence by the Board.

Before the introduction of evidence in support of the Board's alleged case against said respondent Associated Farmers, objection was duly interposed by all respondents to the reception of any evidence under the complaint affecting said respondent Associated Farmers, upon the ground that no jurisdiction was shown in the Board with respect to said respondent Associated Farmers, or any activities of said respondent. Said objection was erroneously overruled, and the Trial Examiner erroneously permitted the introduction of such evidence (Tr. pp. 1298-9).

Said respondents, and each of them, duly objected to the introduction of Board's Exhibit No. 9, consisting of the Articles of Incorporation of respondent Associated Farmers (Tr. p. 1396); Board's Exhibit No. 10, consisting of the bylaws of respondent Associated Farmers (Tr. p. 1397); Board's Exhibit No. 11, consisting of a list of members of respondent Associated Farmers (Tr. p. 1399); and Board's Exhibits Nos. 14-A, 14-B, and 14-C, which exhibits consisted of financial statements of respondent Associated Farmers (Tr. p. 1407), upon the grounds urged in the previous objection to the jurisdiction of the Board over said respondent Associated Farmers. The Trial Examiner erroneously overruled said objections, and erroneously received said exhibits hereinabove mentioned in evidence.

Said respondents duly objected to the admission in evidence of Board's Exhibit No. 12, consisting of the minutes of respondent Associated Farmers for the directors meeting of January 26, 1939, (Tr. p. 1400), upon the ground that said exhibit was incompetent, irrelevant, and immaterial; and the Trial Examiner erroneously received Board's Exhibit No. 12 in evidence (Tr. pp. 1400-1401).

Said respondents, and each of them, duly objected to the admission in evidence of Board's Exhibits Nos. 13-A, 13-B, 13-C, and 13-D. Exhibits Nos. 13-A and 13-C consisted of pamphlets prepared by said respondent Associated Farmers, and Exhibits Nos. 13-B and 13-D consisted of pamphlets prepared by Associated Farmers of California. Respondents, and each of them, objected to the admission of evidence of said exhibits upon the ground that they were incompetent, irrelevant and immaterial. The Trial Examiner erroneously received said Exhibits in evidence (Tr. p. 1403).

Said respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 15, consisting of the reprint of an editorial from the Tulare Times, dated February 10, 1939, given by Forrest Riley to some of the pickets at the Boswell plant, upon the grounds that said exhibit was incompetent, irrelevant and immaterial, that it was hearsay as to all respondents, since no connection was shown between Mr. Riley and any of the respondents which would in any manner authorize him to make any of the statements contained therein or deliver any such literature to any one, and upon the

ground that said exhibit was outside the issues framed by the pleadings in this proceeding, since Mr. Riley was not named as a party. The Trial Examiner erroneously received said Board's Exhibit No. 15 in evidence over the objections of said respondents, as aforesaid (Tr. p. 1561).

Respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 17, which consisted of a notebook containing memoranda prepared by R. K. Martin, relating to some of the matters concerning which he testified, as well as other matters. Said respondents objected to the admission of said exhibit in evidence upon the ground that it was hearsay, self serving, not probative of any issue in this proceeding, except for the limited purpose for which said document had previously been introduced in evidence. The Trial Examiner erroneously received said Board's Exhibit No. 17 in evidence for all purposes (Tr. p. 1750).

Respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 18, which consisted of the bylaws of the Independent, upon the grounds that said exhibit was incompetent, irrelevant and immaterial, not binding on any of the respondents, and upon the ground that it was hearsay as to all respondents and was not probative of any of the issues as between any of the respondents and the Board. The Trial Examiner erroneously received Board's Exhibit No. 18 in evidence (Tr. pp. 1911-12).

Respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 19,

consisting of a list of persons alleged to have been present at a meeting of employees held on the evening of November 18, 1938, upon the grounds that said exhibit was incompetent, irrelevant and immaterial, and hearsay as to all respondents. The Trial Examiner erroneously received said exhibit in evidence (Tr. p. 1919).

Respondents, and each of them, duly objected to the introduction in evidence of Board's Exhibit No. 21, consisting of a telegram from Margaret A. Dum to Alice M. Rossiter, upon the same grounds as the general objection previously made on behalf of all respondents to the introduction of any testimony relating to the alleged case against respondent Exchange. The Trial Examiner erroneously received said exhibit in evidence (Tr. p. 2046).

Respondent Boswell Company duly objected to the admission in evidence of Board's Exhibit No. 24, consisting of a letter from Louis T. Robinson to J. G. Boswell Company, Los Angeles, California, dated November 18, 1938; and Board's Exhibit No. 25, consisting of a memorandum from Gordon L. Hammond to Louis T. Robinson, dated November 19, 1938; and Board's Exhibit No. 26, consisting of a letter from Fred G. Sherrill to J. G. Boswell Company, Corcoran, California, dated November 25, 1938, upon the grounds that no showing had been made which established any violation of the Act by said respondent, or on the part of any one authorized to bind said respondent.

Respondents Associated Farmers and Exchange,

and each of them, duly objected to the introduction of said Board's Exhibits Nos. 24, 25 and 26 in evidence, upon the grounds that said exhibits were hearsay and incompetent, irrelevant, and immaterial, and in no way binding upon either of those respondents, since no authority was shown in Louis Robinson, Gordon Hammond, or Fred G. Sherrill, or any of them, to speak for either of said respondents with respect to any of the matters under investigation in this proceeding.

The Trial Examiner erroneously received said Board's Exhibits Nos. 24, 25, and 26, in evidence (Tr. pp. 2138-9).

Respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 27, consisting of a letter from the Independent, signed by J. W. Hubbard and E. M. Roberson, addressed to respondent Boswell Company, dated November 29, 1938, and Board's Exhibit No. 28, consisting of a letter dated April 15, 1939, addressed to respondent Boswell Company and signed by H. G. McKeever, Secretary, upon the ground that said letters were hearsay and incompetent, irrelevant, and immaterial, and not binding upon any of the respondents. The Trial Examiner erroneously received said Board's Exhibits Nos. 27 and 28 in evidence (Tr. p. 2140).

Respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 30, consisting of an application blank used by respondent Associated Farmers, upon the ground that said exhibit was incompetent, irrelevant and immaterial.

The Trial Examiner erroneously received said Board's Exhibit No. 30 in evidence (Tr. p. 2372).

Respondents Boswell Company and Exchange duly objected to the admission in evidence of Board's Exhibit No. 31, consisting of a check signed by J. B. Boyett, payable to Pacific Tent and Awning Company, upon the ground that said exhibit was hearsay as to said respondents.

Respondent Associated Farmers duly objected to the admission in evidence of said Board's Exhibit No. 31, upon the ground that it was incompetent, irrelevant, immaterial, and upon the ground that no connection was shown between said check and any of the matters involved in this proceeding.

The Trial Examiner erroneously received said Board's Exhibit No. 31 in evidence (Tr. p. 2378).

Respondents, and each of them, duly excepted at the time of the hearing to each of the foregoing rulings by the Trial Examiner, and said respondents, and each of them, do hereby except thereto.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 222.

Exception No. 223.

Respondents, and each of them, hereby except to Conclusions Nos. 1, 2, and 3, pages 90 and 91 of the Intermediate Report, and to each and every portion of each of such conclusions, upon the following grounds, to wit:

(a) That said Conclusions, and each and every portion of each thereof, are not supported by any evidence and are contrary to the evidence, as is par-

ticularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(b) That said Conclusions, and each and every portion of each thereof, are not supported by and are contrary to the Findings.

(c) That no showing was made that respondent Boswell Company was within the jurisdiction of the Act or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(d) That no showing was made that respondent Boswell Company was involved in any way in any "labor disputes" within the meaning of the Act.

(e) That no showing was made that any of the men mentioned in said Conclusions ceased work "as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice."

(f) That said Conclusions, and each thereof, are based upon and are the result of bias and prejudice against all of the respondents on the part of the Trial Examiner.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 223.

Exception No. 225.

Respondents, and each of them, hereby except to Conclusions Nos. 5, 6, and 7, page 92 of the Intermediate Report, and to each and every portion of each of such Conclusions, upon the following grounds, to wit:

(a) That said Conclusions, and each and every portion of each thereof, are not supported by any evidence and are contrary to the evidence, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(b) That said Conclusions, and each and every portion of each thereof, are not supported by and are contrary to the Findings.

(c) That no showing was made that respondent Exchange was within the jurisdiction of the Act or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(d) That no showing was made that the employment of Margaret A. Dunn ceased "as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice."

(e) That there was no showing that Margaret A. Dunn, who was the sole and only employee of respondent Exchange involved in this proceeding, came within the scope of the Act, or that she was in any way entitled to any of the benefits or remedies conferred by the Act.

(f) That there was no showing that respondent Boswell Company was within the jurisdiction of the Act, or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(g) That no showing was made that respondent Exchange acted, either directly or indirectly, in the interest of respondent Boswell Company, with re-

spect to any of the matters involved in this proceeding.

(h) That said Conclusions, and each thereof, are based upon and are the result of bias and prejudice against all of the respondents on the part of the Trial Examiner.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 225.

Exception No. 226.

Respondents, and each of them, hereby except to Recommendations Nos. 1, 2 (a) and (b), of the Intermediate Report, and each and every portion of each of said Recommendations, upon the following grounds; to-wit:

(a) That said Recommendations, and each and every portion of each thereof, are not supported, warranted, or justified by any evidence, and are contrary to the evidence, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(b) That said Recommendations, and each and every portion of each thereof, are not supported, warranted, or justified by the Findings, and are contrary to the Findings.

(c) That said Recommendations, and each and every portion of each thereof, are not supported, warranted, or justified by the Conclusions, and are contrary to the Conclusions.

(d) That no showing was made that respondent Boswell Company ever did any of the acts, or engaged in any of the activities, which the Trial Ex-

aminer recommends in said Recommendations that said respondent "cease and desist" from doing.

(e) That no showing was made that respondent Boswell Company was within the jurisdiction of the Act, or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(f) That said Recommendations, and each thereof, are based on and are the result of bias and prejudice against all the respondents on the part of the Trial Examiner.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 226.

Exception No. 228.

Respondents, and each of them, hereby except to Recommendations Nos. 4 and 5 of the Intermediate Report, and to each and every portion of each of such Recommendations, upon the following grounds, to wit:

(a) That said Recommendations, and each and every portion of each thereof, are not supported, warranted, or justified by any evidence, and are contrary to the evidence, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(b) That said Recommendations, and each and every portion of each thereof, are not supported, warranted, or justified by the Findings, and are contrary to the Findings.

(c) That said Recommendations, and each and every portion of each thereof, are not supported,

warranted, or justified by the Conclusions, and are contrary to the Conclusions.

(d) That no showing was made that respondent Exchange ever did any of the acts, or engaged in any of the activities, which the Trial Examiner recommends in said Recommendations that said respondent "cease and desist" from doing.

(e) That no showing was made that respondent Exchange was within the jurisdiction of the Act or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(f) That no showing was made that Margaret A. Dunn, who was the sole and only employee of Respondent Exchange involved in this proceeding, came within the scope of the Act, or that she was in any way entitled to any of the benefits or remedies conferred by the Act.

(g) That no showing was made that the employment of Margaret A. Dunn ceased "as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice."

(h) That no showing was made that respondent Exchange acted, either directly or indirectly, in the interest of respondent Boswell Company with respect to any of the matters involved in this proceeding.

(i) That said Recommendations, and each thereof, are based on and are the result of bias and prejudice against all the respondents on the part of the Trial Examiner.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 228.

Exception No. 229.

Respondents, and each of them, hereby except to Recommendation No. 6, subdivisions (a) to (h), inclusive, of the Intermediate Report, and to each and every portion of said Recommendation from the commencement thereof down to and including line 4, page 96 of the Intermediate Report upon the following grounds, to wit:

(a) That said Recommendation, and each and every portion thereof, is not supported, warranted, or justified by any evidence, and is contrary to the evidence, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(b) That said Recommendation, and each and every portion thereof, is not supported, warranted, or justified by the Findings, and are contrary to the Findings.

(c) That said Recommendation, and each and every portion thereof, is not supported, warranted, or justified by the Conclusions, and is contrary to the Conclusions.

(d) That no showing was made that said respondents, or any of them, were involved in any way in any "labor dispute" within the meaning of the Act, or that the employment of any of the persons involved in this proceeding ceased "as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice."

(e) That no showing was made that said respondents, or any of them were within the jurisdiction of the Act or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(f) That no showing was made that respondent Exchange acted, either directly or indirectly, in the interest of respondent Boswell Company with respect to any of the matters involved in this proceeding.

(g) That no showing was made that respondent Boswell Company acted, either directly or indirectly, in the interest of respondent Exchange, with respect to any of the matters involved in this proceeding.

(h) That no showing was made that respondent Associated Farmers acted, either directly or indirectly, in the interest of respondent Boswell Company or in the interest of respondent Exchange with respect to any of the matters involved in this proceeding.

(i) That no showing was made that any of the respondents ever did any of the acts, or engaged in any of the activities, which the Trial Examiner recommends in said Recommendation that said respondents "cease and desist" from doing.

(j) That said Recommendation, and each and every portion thereof, is based on and is the result of bias and prejudice against all the respondents on the part of the Trial Examiner.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 229.

Exception No. 230.

Respondents, and each of them, also hereby except to Subdivisions (a), (b), (c), and (d) of Recommendation 6, of the Intermediate Report and each and every portion of said subdivisions, upon the following grounds, to wit:

(a) That there was no showing that at any of the times here in question, after the employment of the persons named in said recommendation ceased, that there was work available at the Boswell Company plant for which any of said persons were qualified or at which any of said persons could have been employed.

(b) That it affirmatively appears from the record that during 1938 and after the employment of James W. Gilmore by respondent Boswell Company ceased, that he secured other regular employment which was substantially equivalent to his former employment by said respondent (Tr. pp. 1268-1270).

(c) That it affirmatively appears from the record that after the employment of Boyd Ely by respondent Boswell Company ceased, he secured other regular and substantially equivalent employment (Tr. pp. 1169-1170).

(d) That no showing was made that Walter Winslow had not obtained other regular and substantially equivalent employment since his employment by respondent Boswell Company ceased.

(e) That it affirmatively appears from the record that in February 1939 an operation was performed on W. R. Johnston's leg, as a result of an injury previously sustained by him during one of

the periods in 1938 when he was engaged in the performance of seasonal work for the respondent Boswell Company; that at the time of the hearing in this proceeding Johnston was incapacitated as a result of said operation and unable to do any type of work; that this disability had existed at all times after his operation and that he received workmen's compensation payments as provided by law during all of that period and was receiving them at the time of the hearing.

That it also affirmatively appears from the record that after his employment by respondent Boswell Company ceased, Johnston secured other regular and substantially equivalent employment (Tr. p. 2352).

(f) That it affirmatively appears from the record that, after the employment of Stephen Griffen by respondent Boswell Company ceased, he secured other regular and substantially equivalent employment (Tr. pp. 1297-8).

(g) That it affirmatively appears from the record that, after the employment of O. L. Farr by respondent Boswell Company ceased, he received other regular and substantially equivalent employment (Tr. p. 2352).

(h) That it affirmatively appears from the record that, shortly after the employment of E. C. Powell by respondent Boswell Company ceased, he had one of his fingers amputated because of an injury previously received while working. He was given a disability rating by the Industrial Accident Commis-

sion, and awarded compensation for a period of 63 weeks (Tr. pp. 696-7).

(i) That it affirmatively appears from the record that L. E. Ely testified that he was not willing to accept reemployment by respondent J. G. Boswell Company at the same hours and pay received by him during the time he was employed by said Company (Tr. pp. 1212 to 1214).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 230.

Exception No. 231.

Respondents, and each of them, hereby except to the hereinafter specified rulings of the Trial Examiner, overruling objections interposed by respondents at the hearing in this proceeding. Each of said objections was erroneously overruled by the Trial Examiner and respondents duly excepted thereto, and do hereby except thereto. The objections and rulings herein referred to appear in the following portions of the transcript, which portions of the transcript respondents, and each of them, incorporate herein as though stated herein in full:

Tr. p. 61, line 20, to p. 62, line 4.

Tr. p. 62, line 17, to p. 62, line 22.

Tr. p. 67, lines 4 to 16.

Tr. p. 69, line 22 to p. 70, line 4.

Tr. p. 70, line 18, to p. 71, line 19.

Tr. p. 76, line 4, to p. 77, line 7.

Tr. p. 80, lines 12 to 16.

Tr. p. 91, line 15, to p. 92, line 16.

Tr. p. 118, lines 19 to 26.

- Tr. p. 129, lines 6 to 12.
Tr. p. 129, line 25, to p. 130, line 3.
Tr. p. 148, lines 1 to 8.
Tr. p. 149, line 22, to p. 150, line 6.
Tr. p. 151, lines 1 to 7.
Tr. p. 152, lines 2 to 6.
Tr. p. 154, line 22 to p. 155, line 1.
Tr. p. 156, lines 4 to 9.
Tr. p. 158, lines 3 to 11.
Tr. p. 163, lines 6 to 10.
Tr. p. 164, lines 13 to 19.
Tr. p. 165, line 22, to p. 166, line 23.
Tr. p. 167, lines 13 to 17.
Tr. p. 168, line 16, to p. 169, line 2.
Tr. p. 169, lines 12 to 16.
Tr. p. 211, line 25, to p. 212, line 4.
Tr. p. 218, line 25, to p. 219, line 9.
Tr. p. 221, line 22, to p. 222, line 2.
Tr. p. 229, line 13 to p. 230, line 3.
Tr. p. 270, line 25, to p. 271, line 8.
Tr. p. 274, line 18, to p. 275, line 11.
Tr. p. 276, lines 10 to 18.
Tr. p. 280, line 16, to p. 281, line 6.
Tr. p. 288, line 13, to p. 289, line 1.
Tr. p. 289, line 21, to p. 290, line 1.
Tr. p. 291, line 25, to p. 292, line 12.
Tr. p. 293, line 23, to p. 294, line 8.
Tr. p. 525, lines 2 to 5.
Tr. p. 526, lines 6 to 12.
Tr. p. 527, lines 15 to 18.
Tr. p. 528, lines 11 to 14.
Tr. p. 530, lines 10 to 22.

- Tr. p. 530, line 24 to p. 531, line 4.
Tr. p. 533, lines 1 to 6.
Tr. p. 536, lines 6 to p. 537, line 4.
Tr. p. 538, lines 14 to 25.
Tr. p. 569, line 16, to p. 570, line 17.
Tr. p. 571, lines 4 to 15.
Tr. p. 572, lines 1 to 21.
Tr. p. 575, lines 1 to 6.
Tr. p. 575, lines 15 to 25.
Tr. p. 595, line 25, to p. 596, line 12.
Tr. p. 597, lines 16 to 25.
Tr. p. 598, lines 13 to 19.
Tr. p. 600, line 17, to p. 601, line 4.
Tr. p. 609, lines 2 to 17.
Tr. p. 611, line 17 to p. 612, line 2.
Tr. p. 613, line 25 to p. 614, line 4.
Tr. p. 618, line 23 to p. 619, line 3.
Tr. p. 620, lines 2 to 7.
Tr. p. 620, line 22 to p. 621, line 4.
Tr. p. 621, line 24 to p. 622, line 6.
Tr. p. 624, line 14 to p. 625, line 8.
Tr. p. 625, lines 11 to 16.
Tr. p. 626, lines 6 to 21.
Tr. p. 627, lines 1 to 4.
Tr. p. 829, line 19 to p. 830, line 7.
Tr. p. 831, lines 6 to 13.
Tr. p. 831, lines 17 to 22.
Tr. p. 832, lines 6 to 11.
Tr. p. 833, line 24 to p. 834, line 12.
Tr. p. 835, lines 5 to 10.

Tr. p. 859, line 18 to p. 860, line 1.

Tr. p. 861, lines 16 to 20.

Tr. p. 863, lines 11 to 16.

Tr. p. 863, line 25 to p. 864, line 3.

Tr. p. 864, lines 16 to 21.

Tr. p. 864, line 24 to p. 865, line 2.

Tr. p. 865, lines 5 to 8.

Tr. p. 865, line 25 to p. 866, line 20.

Tr. p. 872, line 25 to p. 873, line 3.

Tr. p. 876, lines 7 to 12.

Tr. p. 876, lines 17 to 20.

Tr. p. 876, line 21 to p. 877, line 3.

Tr. p. 877, lines 18 to 23.

Tr. p. 878, line 16 to p. 879, line 5.

Tr. p. 879, lines 13 to 18.

Tr. p. 879, line 22 to p. 880, line 1.

Tr. p. 880, lines 9 to 12.

Tr. p. 880, line 25 to p. 881, line 2.

Tr. p. 881, lines 4 to 10.

Tr. p. 882, line 23 to p. 883, line 3.

Tr. p. 883, lines 9 to 18.

Tr. p. 883, line 21 to p. 884, line 1.

Tr. p. 884, line 22 to p. 885, line 3.

Tr. p. 905, lines 16 to 25.

Tr. p. 906, lines 18 to 21.

Tr. p. 984, lines 9 to 13.

Tr. p. 998, lines 1 to 6.

Tr. p. 999, lines 3 to 8.

Tr. p. 1000, lines 6 to 21.

Tr. p. 1003, lines 8 to 15.

Tr. p. 1004, line 23 to p. 1005, line 4.

Tr. p. 1006, line 5 to 1007, line 3.

- Tr. p. 1038, lines 8 to 14.
- Tr. p. 1040, lines 12 to 16.
- Tr. p. 1045, lines 19 to 24.
- Tr. p. 1046, lines 19 to 21.
- Tr. p. 1047, lines 6 to 11.
- Tr. p. 1048, lines 6 to 9.
- Tr. p. 1050, lines 10 to 13.
- Tr. p. 1050, lines 16 to 18.
- Tr. p. 1050, line 25 to p. 1051, line 3.
- Tr. p. 1051, lines 18 to 23.
- Tr. p. 1054, line 23 to p. 1055, line 14.
- Tr. p. 1062, lines 14 to 20.
- Tr. p. 1064, lines 3 to 7.
- Tr. p. 1064, lines 13 to 19.
- Tr. p. 1067, lines 1 to 8.
- Tr. p. 1068, line 23 to p. 1069, line 6.
- Tr. p. 1080, lines 7 to 14.
- Tr. p. 1081, lines 2 to 7.
- Tr. p. 1086, lines 20 to 23.
- Tr. p. 1152, lines 14 to 21.
- Tr. p. 1153, lines 9 to 13.
- Tr. p. 1159, lines 6 to 10.
- Tr. p. 1159, lines 17 to 19.
- Tr. p. 1160, lines 22 to 25.
- Tr. p. 1161, line 25 to p. 1162, line 4.
- Tr. p. 1162, lines 10 to 13.
- Tr. p. 1163, lines 13 to 20.
- Tr. p. 1194, lines 7 to 17.
- Tr. p. 1195, lines 9 to 12.
- Tr. p. 1195, lines 19 to 22.
- Tr. p. 1197, line 25 to p. 1196, line 5.
- Tr. p. 1198, lines 14 to 24.

- Tr. p. 1201, lines 1 to 6.
Tr. p. 1202, lines 12 to 19.
Tr. p. 1203, lines 8 to 12.
Tr. p. 1210, lines 7 to 11.
Tr. p. 1210, lines 23 to 25.
Tr. p. 1265, line 20 to p. 1266, line 4.
Tr. p. 1288, line 15 to p. 1289, line 16.
Tr. p. 1292, lines 9 to 17.
Tr. p. 1294, lines 15 to 24.
Tr. p. 1301, lines 6 to 19.
Tr. p. 1301, lines 20 to 26.
Tr. p. 1302, lines 2 to 5.
Tr. p. 1302, lines 11 to 17.
Tr. p. 1303, lines 17 to 20.
Tr. p. 1304, lines 9 to 13.
Tr. p. 1304, lines 15 to 18.
Tr. p. 1305, lines 3 to 15.
Tr. p. 1306, line 9 to p. 1307, line 18.
Tr. p. 1310, lines 16 to 24.
Tr. p. 1311, lines 12 to 22.
Tr. p. 1312, lines 8 to 11.
Tr. p. 1312, line 19 to p. 1313, line 25.
Tr. p. 1315, lines 4 to 8.
Tr. p. 1325, lines 15 to 20.
Tr. p. 1327, lines 2 to 7.
Tr. p. 1355, lines 12 to 17.
Tr. p. 1355, line 22 to p. 1356, line 1.
Tr. p. 1357, lines 8 to 11.
Tr. p. 1358, line 25 to p. 1359, line 5.
Tr. p. 1362, lines 19 to 23.
Tr. p. 1363, lines 4 to 7.
Tr. p. 1365, lines 4 to 12.

- Tr. p. 1366, line 22 to p. 1367, line 1.
Tr. p. 1397, line 21 to p. 1398, line 1.
Tr. p. 1400, lines 12 to 19.
Tr. p. 1411, lines 9 to 14.
Tr. p. 1426, line 3 to p. 1427, line 19.
Tr. p. 1437, line 9 to p. 1438, line 2.
Tr. p. 1438, lines 5 to 10.
Tr. p. 1439, line 25 to p. 1440, line 4.
Tr. p. 1440, lines 7 to 10.
Tr. p. 1446, line 1 to p. 1447, line 1.
Tr. p. 1447, lines 13 to 17.
Tr. p. 1447, line 21 to p. 1448, line 2.
Tr. p. 1448, lines 4 to 8.
Tr. p. 1452, line 16 to p. 1453, line 1.
Tr. p. 1459, line 25 to p. 1460, line 20.
Tr. p. 1461, line 16 to p. 1462, line 4.
Tr. p. 1496, lines 10 to 22.
Tr. p. 1511, lines 1 to 16.
Tr. p. 1525, line 18 to p. 1526, line 5.
Tr. p. 1573, line 21 to p. 1574, line 8.
Tr. p. 1604, line 19 to p. 1605, line 12.
Tr. p. 1610, lines 10 to 17.
Tr. p. 1610, line 24 to p. 1611, line 1.
Tr. p. 1618, lines 17 to 22.
Tr. p. 1619, lines 10 to 16.
Tr. p. 1634, line 22, to p. 1635, line 4.
Tr. p. 1639, lines 8 to 14.
Tr. p. 1649, lines 17 to 23.
Tr. p. 1662, lines 9 to 17.
Tr. p. 1663, lines 3 to 8.
Tr. p. 1664, lines 5 to 7.
Tr. p. 1676, lines 2 to 21.

- Tr. p. 1676, lines 1 to 23.
Tr. p. 1678, lines 14 to 19.
Tr. p. 1679, lines 15 to 21.
Tr. p. 1679, line 25 to p. 1680, line 2.
Tr. p. 1682, lines 1 to 8.
Tr. p. 1682, line 17 to p. 1683, line 5.
Tr. p. 1686, lines 2 to 6.
Tr. p. 1687, line 24 to p. 1688, line 10.
Tr. p. 1697, line 16, to p. 1698, line 7.
Tr. p. 1699, lines 12 to 25.
Tr. p. 1725, line 7.
Tr. p. 1762, lines 17 to 24.
Tr. p. 1763, line 5 to p. 1764, line 8.
Tr. p. 1775, lines 4 to 9.
Tr. p. 1776, lines 4 to 8.
Tr. p. 1786, line 24 to p. 1787, line 5.
Tr. p. 1795, lines 3 to 8.
Tr. p. 1808, line 20 to p. 1809, line 1.
Tr. p. 1820, lines 14 to 21.
Tr. p. 1824, lines 11 to 19.
Tr. p. 1832, line 12 to p. 1833, line 9.
Tr. p. 1833, line 22 to p. 1834, line 15.
Tr. p. 1840, line 24 to p. 1841, line 8.
Tr. p. 1848, line 24 to p. 1849, line 9.
Tr. p. 1856, lines 3 to 10.
Tr. p. 1856, lines 11 to 20.
Tr. p. 1858, lines 1 to 5.
Tr. p. 1858, line 19 to p. 1859, line 6.
Tr. p. 1865, lines 9 to 13.
Tr. p. 1865, line 24 to p. 1866, line 3.
Tr. p. 1866, lines 19 to 25.
Tr. p. 1867, lines 5 to 11.

- Tr. p. 1876, lines 21 to 24.
Tr. p. 1883, lines 10 to 19 ; lines 23 to 25.
Tr. p. 1887, lines 16 to 20.
Tr. p. 1907, line 19 to p. 1908, line 6.
Tr. p. 1924, line 23 to p. 1925, line 2.
Tr. p. 1928, lines 6 to 21.
Tr. p. 1939, lines 8 to 17.
Tr. p. 2004, line 19 to p. 2005, line 4.
Tr. p. 2006, lines 3 to 20.
Tr. p. 2007, lines 12 to 25.
Tr. p. 2017, lines 10 to 20.
Tr. p. 2018, lines 10 to 17.
Tr. p. 2037, lines 18 to 25.
Tr. p. 2038, line 1 to p. 2039, line 2.
Tr. p. 2039, lines 9 to 11.
Tr. p. 2041, line 24 to p. 2041, line 13.
Tr. p. 2042, lines 4 to 11.
Tr. p. 2043, lines 19 to 23.
Tr. p. 2044, line 24 to p. 2045, line 4.
Tr. p. 2048, lines 6 to 13.
Tr. p. 2049, lines 8 to 14.
Tr. p. 2050, lines 16 to 18.
Tr. p. 2051, lines 9 to 17.
Tr. p. 2053, lines 15 to 18.
Tr. p. 2055, lines 13 to 18 ; lines 20 to 24.
Tr. p. 2214, lines 4 to 10.
Tr. p. 2217, lines 2 to 11.
Tr. p. 2218, lines 7 to 12.
Tr. p. 2232, lines 9 to 12.
Tr. p. 2252, lines 5 to 14.
Tr. p. 2272, line 3 to p. 2273, line 1.

- Tr. p. 2281, lines 9 to 19.
Tr. p. 2282, line 10 to p. 2283, line 2.
Tr. p. 2285, lines 3 to 18.
Tr. p. 2288, lines 4 to 7.
Tr. p. 2288, line 20 to p. 2289, line 17.
Tr. p. 2293, line 21.
Tr. p. 2309, lines 5 to 16.
Tr. p. 2312, line 4 to p. 2313, line 20.
Tr. p. 2317, line 24 to p. 2318, line 13.
Tr. p. 2319, line 19 to p. 2320, line 3.
Tr. p. 2320, line 5 to p. 2321, line 3.
Tr. p. 2321, line 24 to p. 2322, line 12.
Tr. p. 2326, lines 18 to 23.
Tr. p. 2343, lines 1 to 12.
Tr. p. 2390, lines 14 to 17.
Tr. p. 2453, lines 9 to 22.
Tr. p. 2454, lines 3 to 7.
Tr. p. 2456, line 4 to p. 2457, line 5.
Tr. p. 2463, lines 3 to 9.
Tr. p. 2473, lines 11 to 16.
Tr. p. 2474, lines 13 to 18.
Tr. p. 2484, lines 11 to 18.
Tr. p. 2487, lines 1 to 16.
Tr. p. 2668, line 18 to p. 2669, line 8.
Tr. p. 2678, line 16 to p. 2679, line 3.
Tr. p. 2679, lines 7 to 12.
Tr. p. 2731, line 23 to p. 2732, line 6.
Tr. p. 2733, line 24 to p. 2734, line 17.
Tr. p. 2734, line 26 to p. 2735, line 4.
Tr. p. 2735, lines 12 to 20.
Tr. p. 2736, lines 5 to 11.
Tr. p. 2738, lines 6 to 12.

Tr. p. 2746, lines 15 to 25.

Tr. p. 2748, line 22 to p. 2749, line 2.

Tr. p. 2750, lines 6 to 10.

Tr. p. 2914, line 23 to p. 2915, line 2.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 231.

Exception No. 232.

Respondents, and each of them, hereby except to the hereinafter specified erroneous rulings of the Trial Examiner sustaining objections interposed by counsel for the Board at the hearing in this proceeding. Respondents duly excepted to and do hereby except to each and all of said rulings. The objections and rulings herein referred to and to which exception is taken appear in the following portions of the transcript, which portions of the transcript respondents, and each of them, incorporate herein as though stated herein in full.

Tr. p. 331, lines 7 to 12.

Tr. p. 395, lines 15 to 20.

Tr. p. 448, lines 13 to 24.

Tr. p. 452, lines 20 to 24.

Tr. p. 512, lines 21 to 25.

Tr. p. 698, lines 20 to 23.

Tr. p. 762, lines 17 to 19.

Tr. p. 764, lines 10 to 17.

Tr. p. 773, line 21 to p. 774, line 5.

Tr. p. 822, lines 15 to 24.

Tr. p. 942, line 16 to p. 943, line 9.

Tr. p. 941, line 23 to p. 942, line 6.

Tr. p. 954, lines 13 to 16.

- Tr. p. 965, line 20 to p. 966, line 2.
Tr. p. 968, lines 5 to 8.
Tr. p. 978, lines 10 to 15.
Tr. p. 978, line 17 to p. 979, line 5.
Tr. p. 979, line 6 to p. 980, line 2.
Tr. p. 1028, lines 12 to 17.
Tr. p. 1104, lines 8 to 13.
Tr. p. 1105, lines 2 to 7.
Tr. p. 1105, lines 19 to 23.
Tr. p. 1106, lines 20 to 25.
Tr. p. 1108, lines 10 to 14.
Tr. p. 1111, line 12 to p. 1112, line 6.
Tr. p. 1115, lines 3 to 9.
Tr. p. 1116, line 21 to p. 1117, line 3.
Tr. p. 1136, lines 8 to 14.
Tr. p. 1136, line 22 to p. 1137, line 11.
Tr. p. 1137, lines 13 to 22.
Tr. p. 1137, line 23 to p. 1138, line 11.
Tr. p. 1138, lines 14 to 19.
Tr. p. 1143, lines 15 to 21.
Tr. p. 1143, line 22 to p. 1144, line 1.
Tr. p. 1154, lines 15 to 19.
Tr. p. 1182, lines 21 to 23.
Tr. p. 1187, lines 14 to 18.
Tr. p. 1187, lines 7 to 13.
Tr. p. 1213, line 25 to p. 1214, line 7.
Tr. p. 1228, lines 14 to 23.
Tr. p. 1235, lines 1 to 11.
Tr. p. 1236, line 22 to p. 1237, line 4.
Tr. p. 1240, lines 3 to 11.
Tr. p. 1250, lines 10 to 14.
Tr. p. 1250, lines 17 to 23.

Tr. p. 1340, lines 3 to 10.

Tr. p. 1350, lines 7 to 10.

Tr. p. 1350, lines 12 to 16.

Tr. p. 1368, lines 15 to 18.

Tr. p. 1694, lines 8 to 14.

Tr. p. 1966, line 13 to p. 1966, line 5.

Tr. p. 1967, lines 6 to 22.

Tr. p. 1967, line 24 to p. 1968, line 4.

Tr. p. 1968, lines 13 to 21.

Tr. p. 1970, line 24 to p. 1971, line 2.

Tr. p. 2061, lines 14 to 19.

Tr. p. 2353, line 8 to p. 2354, line 6.

Tr. p. 2642, lines 5 to 11.

Tr. p. 2757, lines 8 to 15.

Tr. p. 2763, lines 7 to 15.

Tr. p. 2803, lines 1 to 8.

Tr. p. 2816, lines 7 to 14.

Tr. p. 2820, lines 2 to 18.

Tr. p. 2821, lines 2 to 9.

Tr. p. 2823, line 3 to p. 2824, line 2.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 232.

Exception No. 233.

Respondents, and each of them, hereby except to the hereinafter specified erroneous rulings of the Trial Examiner denying motions to strike made by respondents at the hearing in this proceeding. Respondents duly excepted to and do hereby except to each and all of said rulings. The motions to strike and rulings herein referred to and to which exception is taken appear in the following portions of the

transcript, which portions of the transcript respondents, and each of them, incorporate herein as though stated herein in full.

Tr. p. 91, line 6 to p. 93, line 14.

Tr. p. 148, line 20, to p. 149, line 12.

Tr. p. 156, line 10 to p. 157, line 14.

Tr. p. 219, lines 10 to 25.

Tr. p. 271, line 9 to p. 273, line 13.

Tr. p. 277, line 11 to p. 279, line 3.

Tr. p. 281, line 10 to p. 282, line 10.

Tr. p. 289, lines 2 to 20.

Tr. p. 290, line 21 to p. 292, line 12.

Tr. p. 526, line 13 to p. 527, line 21.

Tr. p. 528, line 15 to p. 530, line 9.

Tr. p. 533, lines 7 to 10.

Tr. p. 537, lines 15 to 25.

Tr. p. 541, lines 5 to 16.

Tr. p. 541, line 17 to p. 542, line 8.

Tr. p. 598, lines 2 to 12.

Tr. p. 613, lines 8 to 14.

Tr. p. 613, line 25 to p. 614, line 13.

Tr. p. 614, line 16 to p. 617, line 10.

Tr. p. 784, line 9 to p. 786, line 4.

Tr. p. 872, line 25 to p. 873, line 10.

Tr. p. 1038, lines 16 to 23.

Tr. p. 1090, line 21 to p. 1091, line 21.

Tr. p. 1116, lines 12 to 17.

Tr. p. 1162, line 24 to p. 1163, line 4.

Tr. p. 1210, line 21 to p. 1210, line 6.

Tr. p. 1312, line 12 to p. 1313, line 7.

Tr. p. 1316, line 15, to p. 1317, line 5.

Tr. p. 1318, line 24 to p. 1320, line 20.

Tr. p. 1322, line 24 to p. 1323, line 10.

Tr. p. 1324, line 17 to p. 1325, line 14.

Tr. p. 1357, lines 12 to 24.

Tr. p. 1449, lines 4 to 10.

Tr. p. 1940, lines 1 to 9.

Tr. p. 2002, line 3 to p. 2003, line 4.

Tr. p. 2041, line 14 to p. 2042, line 3.

Tr. p. 2255, line 12 to p. 2256, line 23.

Tr. p. 2293, line 21 to p. 2295, line 5.

Tr. p. 2889, lines 1 to 16.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 233.

Exception No. 234.

Respondent Boswell Company hereby excepts to the undue delay in bringing this case to a hearing, and to the undue delay of the Trial Examiner in rendering his Intermediate Report following the hearing.

The record shows that the original charge setting forth the alleged unfair labor practices of said respondent was filed November 21, 1938 (Board's Exhibit No. 1-B). However, no complaint was issued until March 4, 1939, and no order was made setting the case for hearing until said date, on which date an order was made setting the case for hearing on March 13, 1939 (Board's Exhibit No. 1-G). After the case had been set for hearing, the matter was indefinitely continued by order of the acting Regional Director, Twenty-first Region, dated March 6, 1939, without any reasons given therefor (Board's Exhibit No. 1-J). Thereafter, the case was not set

for hearing until May 6, 1939, on which date an amended complaint was issued and an order was made by the Regional Director of the Twenty-first Region, setting the case for hearing on May 18, 1939 (Board's Exhibit No. 1-S). The record shows that the transcript was written up daily, and although upon conclusion of the hearing June 16, 1939, the reporter's official transcript had been completely written up, the Trial Examiner delayed rendering his Intermediate Report until January 1940, and it was not served upon said respondent until January 25, 1940.

The effect of this undue delay would be extremely prejudicial to the respondent in event the Board should render its decision in accordance with the erroneous recommendations of the Trial Examiner, wherein it is recommended that said respondent Boswell Company reinstate, with back pay, the following named men, to wit: James W. Gilmore, Boyd Ely, Walter Winslow, W. R. Johnston, Steven Griffen, Eugene Clark Ely, George J. Andrade, O. L. Farr, R. K. Martin, H. N. Wingo, E. C. Powell, L. A. Spear, and L. E. Ely (Intermediate Report, Recommendation 6 (b) and (c), page 94).

Respondent Boswell Company hereby specifies the foregoing as Exception No. 234.

Dated, March 11, 1940.

J. C. BOSWELL CO,
a corporation

By LOUIS T. ROBINSON

Assistant Secretary
CORCORAN TELEPHONE
EXCHANGE, a corporation

By C. H. GLENN

President and Manager
Associated Farmers of Kings
County, Inc.

By J. B. BOYETT

President
SIDNEY J. W. SHARP
M. WINGROVE

Attorneys for Respondents J.
G. Boswell Company, a cor-
poration, and Corcoran Tele-
phone Exchange, a corpora-
tion.

ROGERS AND CLARK

By JOHN H. PAINTER

Attorneys for Respondent As-
sociated Farmers of Kings
County, Inc.



United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

J. G. BOSWELL COMPANY and CORCORAN
TELEPHONE EXCHANGE,
Respondents.

Transcript of Record

In Seven Volumes

VOLUME II

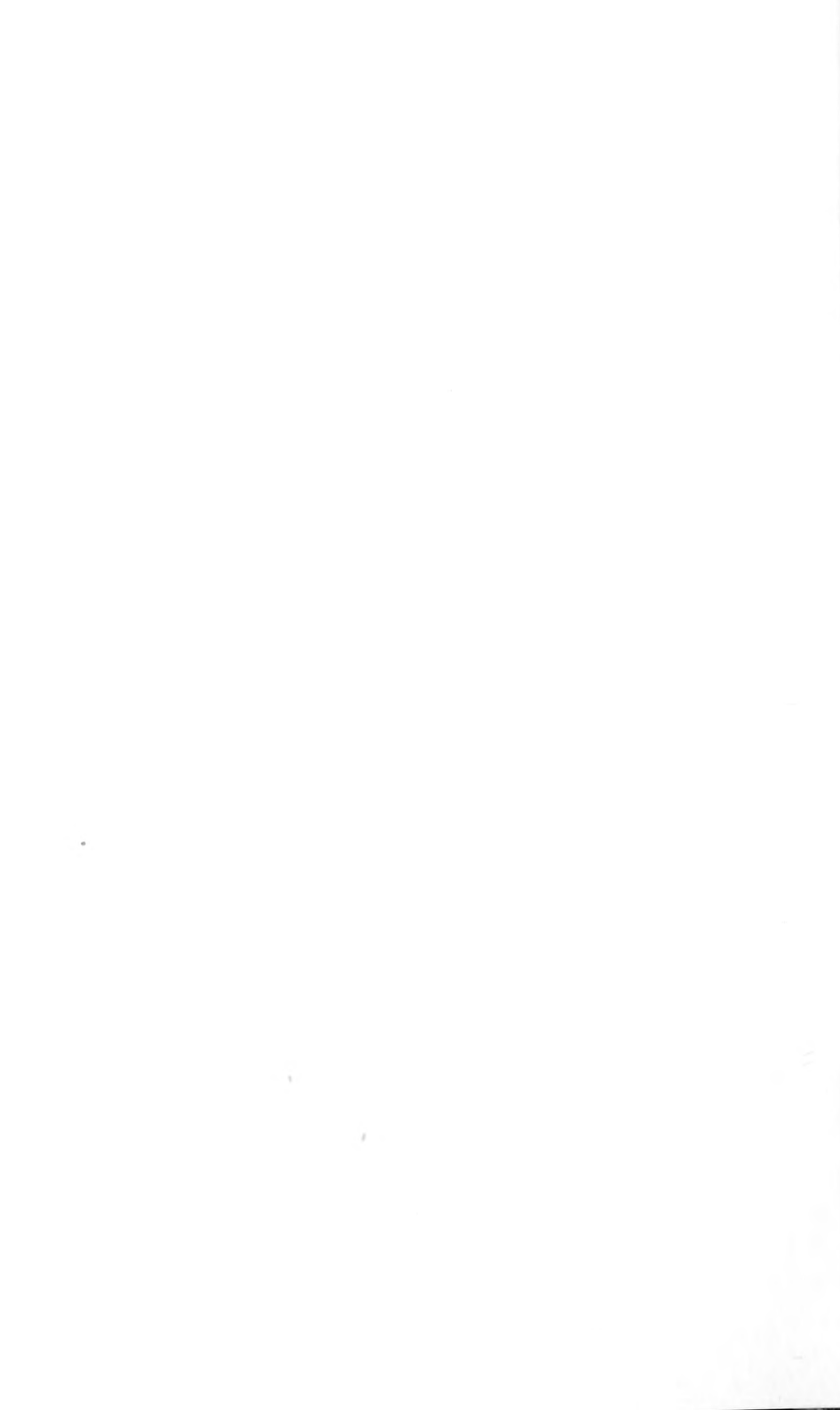
Pages 499 to 979

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SEP 15 1942

PAUL P. O'BRIEN,
CLERK

Upon Petition for Enforcement of An Order of the
National Labor Relations Board



No. 10148

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

J. G. BOSWELL COMPANY and CORCORAN
TELEPHONE EXCHANGE,
Respondents.

Transcript of Record
In Seven Volumes
VOLUME II
Pages 499 to 979

Upon Petition for Enforcement of An Order of the
National Labor Relations Board

United States of America
Before the National Labor Relations Board

Case No. C-1476

In the Matter of

J. G. BOSWELL COMPANY, a corporation, AS-
SOCIATED FARMERS OF KINGS COUN-
TY, INC., a corporation, and CORCORAN
TELEPHONE EXCHANGE, a corporation,

and

COTTON PRODUCTS AND GRAIN MILL
WORKERS UNION, Local No. 21798, A. F.
of L.

Mr. Frank A. Mouritsen, Mr. William R. Walsh,
and Mr. Francis J. McTernan, Jr., for the
Board.

Rogers & Clark, by Mr. Webster V. Clark and Mr.
John Painter, of San Francisco, Calif., for the
Associated Farmers.

Sidney J. W. Sharp and M. Wingrove, by Mr. M.
Wingrove, of Hanford, Calif., for the Boswell
Company and the Exchange.

Mr. E. F. Prior, of Wilmington, Calif., for the Fed-
eral.

Elizabeth W. Weston, of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon charges and amended charges duly filed by Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L., herein called the Federal,¹ the National Labor Relations Board, herein called the Board, by the Acting Regional Director for the Twenty-first Region (Los Angeles, California), issued and duly served its complaint dated March 4, 1939, against J. G. Boswell Company, Corcoran, California, herein called the Boswell Company, or the Company, and Associated Farmers of Kings County, Inc., Corcoran, California, herein called the Associated Farmers. On May 6, 1939, the Board, by the Regional Director for the Twenty-first Region, issued its amended complaint against the Boswell Company, the Associated Farmers, and Corcoran Telephone Exchange, Corcoran, California, herein called the Exchange, alleging that the Boswell Company, Associated Farmers, and the Ex-

¹The original charge was filed, on November 23, 1938, by California State Council of Soap and Edible Oil Workers, A. F. of L., with the Regional Director for the Twentieth Region (San Francisco, California). On December 22, 1938, acting pursuant to Article II, Section 37 (c), of National Labor Relations Board Rules and Regulations—Series 1, as amended, the Board ordered the case transferred to and continued in the Twenty-first Region. On January 17, February 6, March 4, and May 4, 1939, respectively, amended charges were filed by the Federal.

change, herein collectively called the respondents, had engaged in and were engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (4) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act, and that in addition, the Boswell Company had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (2) and Section 2 (6) and (7) of the Act. Copies of the amended complaint and accompanying notices of hearing and of the fourth amended charge were duly served upon the respondents, the Federal, and J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, herein called the Association, a labor organization alleged in the complaint to be dominated and interfered with by the Boswell Company.

With respect to the unfair labor practices, the amended complaint alleges in substance as follows:

A. That the Boswell Company (1) discouraged membership in the Federal by discriminating with respect to the hire and tenure of employment of 14 of its employees² because the said employees joined and assisted the Federal and engaged in concerted activities with other employees of the Company for the purposes of mutual aid and protection; (2)

²W. R. Johnston, Stephen J. Griffin, Elmer Eller, Eugene Clark Ely, Boyd Ely, Walter Winslow, Elgin Ely, George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, E. C. Powell, L. A. Spear, H. N. Wingo.

formed, dominated, and interfered with the administration of the Association; and (3) by the foregoing and other acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act;

B. That the Associated Farmers and the Boswell Company (1) on January 30, 1939, by force and violence and threats thereof drove Federal pickets from the vicinity of the Boswell Company plant; (2) on or about January 20, 1939, and thereafter, circulated among employers in Kings County, California, blacklists containing the names of Federal members employed by the Boswell Company; and (3) by the aforesaid acts the said respondents and each of them interfered with, restrained, and coerced employees of the Boswell Company in the exercise of the rights guaranteed in Section 7 of the Act;

C. That the Boswell Company, the Associated Farmers, and the Exchange (1) on or about March 2, 1939, discouraged membership in the Federal by discharging and causing the discharge of Margaret A. Dunn from her employment with the Exchange because she was suspected of having assisted the Federal in its activities; (2) on or about March 14, 1939, refused to reinstate or permit the reinstatement of Dunn to her position of employment with the Exchange because she filed charges of unfair labor practices with the Board; (3) threatened Dunn with the loss of employment of various members of her family if she did not withdraw the afore-

said charges; and (4) by the aforesaid acts, said respondents and each of them interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act;

D. That, in the alternative, the aforesaid acts with respect to Dunn were committed by the Exchange and the Associated Farmers, acting in the interest of the Boswell Company.

As to the Associated Farmers, the amended complaint alleges that at all times said respondent has actively opposed and prevented the exercise by employees of the rights guaranteed in Section 7 of the Act, that at all times mentioned in the amended complaint said respondent acted directly and indirectly in the interest of the Boswell Company, and that said respondent, the Associated Farmers, is an employer within the meaning of Section 2 (2) of the Act.

Each respondent filed its answer to the amended complaint admitting certain allegations as to its corporate existence but denying that it had engaged in or was engaging in the alleged unfair labor practices. Each respondent also filed with the Regional Director a written motion to dismiss the complaint upon the ground that no act of said respondent or to which said respondent was a party was in commerce or affected or burdened commerce, and that the Board had no jurisdiction over said respondent.

Pursuant to notice, a hearing was held at Corcoran, California, from May 18 to June 16, 1939, before John T. Lindsay, the Trial Examiner duly

designated by the Board. The Board and the respondents were represented by counsel, the Federal by its business representative; all participated in the hearing.³ Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the opening of the hearing, the Trial Examiner denied the respondents' aforesaid written motions to dismiss the complaint. During the hearing, the respondents, by sundry motions and objections to the admission of evidence, sought dismissal of the amended complaint in so far as it contains allegations relating to Margaret A. Dunn, on the ground that the Board did not have before it, and did not serve upon the respondents, a proper charge alleging that the respondents had engaged in unfair labor practices with respect to Dunn.⁴ The

³The Association did not seek to intervene in the proceedings. Samuel Brenes, treasurer of the Association, called as a witness for the Board on June 6, 1939, stated that he did not desire counsel.

⁴The respondents' counsel argued that the allegations in the fourth amended charge respecting the discharge of Dunn and the subsequent efforts exerted to induce her to withdraw charges filed by her with the Board were a nullity, inasmuch as Dunn was not a member of the Federal, and there was no evidence that she had authorized the Federal to file a charge in her behalf. These contentions are without merit. Cf. *Matter of Washougal Woolen Mills and Local 127, Textile Workers Union of America*, 23 N.L.R.B., No. 1.

Trial Examiner denied these motions and overruled the respondents' objections to the admission of evidence bearing on the issues with respect to Dunn. The Board's attorney moved at the hearing to amend the amended complaint by adding thereto an allegation that the respondent Boswell Company discouraged membership in the Federal by discriminatorily discharging James E. Gilmore for union activities on or about March 20, 1938, and by refusing to reinstate him on or about July 1, 1938. The Trial Examiner granted this motion, granting to the respondents five (5) days in which to meet the additional allegation. During said five (5) day period the Trial Examiner refused to receive evidence respecting the discharge of Gilmore. Thereafter the respondents separately filed their amended answers, denying the alleged discrimination. These rulings by the Trial Examiner are hereby affirmed.

At the opening of the Board's case against the Exchange, the Associated Farmers moved to exclude all evidence adduced in support of the complaint respecting the Exchange and the Associated Farmers on the ground that the complaint fails to allege that the Associated Farmers acted as an "employer," in the interest of the Exchange, within the meaning of Section 2 (2) of the Act. The Trial Examiner received the evidence but did not rule specifically on the Associated Farmers' motion. The motion is hereby denied.

At the close of the Board's case the Associated Farmers and the Exchange separately moved that

the complaint against them be dismissed for lack of jurisdiction and because of insufficient evidence to support it. The Trial Examiner denied these motions. His ruling is hereby affirmed. At the close of the hearing, the Exchange moved to strike all testimony introduced by the Board in support of the allegations of the complaint against said respondent, upon the grounds that the Board has no jurisdiction over said respondent and upon the further ground that Margaret A. Dunn, since she is not a member of any labor organization and has not assisted or attempted to assist any labor organization, is not entitled to the protection afforded to employees by Sections 7 and 8 of the Act. The Trial Examiner reserved ruling on this motion and thereafter denied it in his Intermediate Report. This ruling is hereby affirmed.

During the course of the hearing the Trial Examiner made numerous rulings upon other motions and upon objections to the admission of evidence, granting, among others, a motion by counsel for the Board to conform the complaint, as amended, to the proof with respect to dates and the spelling of names. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On January 11, 1940, the Trial Examiner issued his Intermediate Report in which he found that the Boswell Company had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7)

of the Act; that the Associated Farmers had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act; and that the Exchange had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (4) and Section 2 (6) and (7) of the Act. The Trial Examiner recommended that the respondents cease and desist from the unfair labor practices engaged in by them and take certain affirmative action in order to effectuate the policies of the Act. The Trial Examiner recommended that the complaint be dismissed in so far as it alleges that the Boswell Company discriminated with respect to the hire and tenure of employment of Elmer Eller and Joe Briley, and that the Associated Farmers blacklisted Federal members. No exceptions were filed to these recommendations. Except as to Briley, whose case is discussed in Section III, A, 2, *infra*, no evidence was introduced in support of these allegations, and they are dismissed herein. The allegation that the Boswell Company blacklisted members of the Federal is also dismissed herein for the same reason. The Trial Examiner further recommended that the complaint be dismissed in so far as it alleges that the Boswell Company and the Associated Farmers engaged in unfair labor practices within the meaning of Section 8 (4) of the Act; and he did not find that either the Associated Farmers or the Boswell Company caused the discriminatory discharge of Margaret A. Dunn from her position of employment with the Exchange.

On March 15, 1940, the respondents filed exceptions to the Intermediate Report. Pursuant to leave granted to all parties, the respondents filed a brief on March 20, 1940. No oral argument was requested.

The Board has considered the respondents' exceptions and brief and, save as the exceptions are consistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondents

A. The Boswell Company⁵

The J. G. Boswell Company is a California corporation having its principal office in Los Angeles,

⁵Certain of the facts herein stated with respect to the Boswell Company's business are derived from a stipulation between counsel for the Board and counsel for the Boswell Company. At the hearing counsel for the Associated Farmers objected to the introduction of the stipulation in evidence, on the ground that the stipulation is not binding upon the Associated Farmers and that it is "not probative of any of the matters set forth in the stipulation, and is hearsay." We find no merit in this objection. The stipulation constitutes an admission by the Boswell Company that it ships certain percentages of its products and raw materials across State lines. This is evidence competent to prove the facts in issue as against the Associated Farmers as well as against the Boswell Company. The Associated Farmers

California. It is authorized to do business in the State of Arizona as well as in the State of California, and is engaged in those States, in the business of growing and financing the growing of cotton, ginning and baling cotton, extracting cottonseed oil, selling and distributing cotton, cottonseed oil, and cottonseed cake and meal, and purchasing, feeding, and selling cattle. The Company owns and operates seven cotton gins, a cottonseed oil mill, and a cattle feed yard in the State of California and 10 gins and a cottonseed oil mill in the State of Arizona.

The Boswell Company's cotton ginning and oil milling operations at Corcoran, California, are its only operations directly involved in this proceeding. At its Corcoran plant the Company owns and operates six cotton gins, an oil mill, and a cattle feed yard. Between July 1, 1937 and June 30, 1938, the Company ginned and baled at its Corcoran plant 47,111 bales of cotton, of which 40,138 bales were owned by it and 6,973 bales were owned by others. All of the 40,138 bales owned and processed by the

had opportunity at the hearing, if it so desired, to challenge the truth of the facts stated in the stipulation. It did not even suggest that it could or would deny these facts. At the hearing, its counsel stated that he was objecting to the introduction of the stipulation "for what it is worth for that purpose on the record, that any matters agreed to between Boswell and the Board with respect to its business * * * isn't evidence against us because *we don't know anything about it to be frank about what Boswell's business is.*" (Italics added.)

Boswell Company were shipped by it out of the State of California. During the same period the Company ginned and baled 5,096 bales of linters, of which at least 862 bales were shipped out of the State of California. During the same period, the Boswell Company produced 10,000 tons of cottonseed cake of which approximately 60 tons were shipped to points outside the State of California, the balance being sold or consumed within the State.

All the cotton and cottonseed processed by the Boswell Company in the above-described operations were purchased or grown by it in the State of California. In baling the cotton, the Boswell Company used 52,206 "patterns" consisting of jute from India and steel bands from the State of Alabama.

B. The Associated Farmers

The Associated Farmers of Kings County, Inc., a non-profit corporation organized under the laws of California, is joined as a respondent in these proceedings upon the theory, stated in the complaint, that, acting in the interest of the Boswell Company within the meaning of Section 2 (2) of the Act⁶ it interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act. The evidence adduced in support of this contention will be discussed in Section III, B, *infra*.

⁶Section 2 (2) of the Act provides: "The term 'employer' includes any person acting in the interest of an employer, directly or indirectly, * * *."

The Associated Farmers was incorporated on October 18, 1938, for the stated purposes of protecting American institutions and fighting the "infiltration of subversive doctrines" which imperil constitutional liberties. Its organizers and incorporators are farmers and business men of Kings County, California. The Associated Farmers is affiliated with the Associated Farmers of California, Inc., herein called the State organization, an organization comprising approximately 43 county units such as the one existing in Kings County. The president of the Associated Farmers is a director of the State organization.

The Associated Farmers admits to its membership "any person, firm, association or corporation engaged in agriculture, directly or indirectly." According to a printed notice publicly distributed by the Associated Farmers, "You are eligible for membership in the Associated Farmers, * * * if you are an American corporation, partnership, or individual 'Engaged in Agriculture.' You are 'Engaged in Agriculture' if you control agricultural lands through lease or ownership or pack or process products of the farms of California." Any "person or corporation not actively engaged in farming" is eligible for associate membership.

The bylaws of the Associated Farmers provide that the organization shall be financed by "voluntary contributions based on an equal unit proration of the various agricultural and horticultural products of the State of California, such pro-ration to

be determined by the Executive Committee of the Associated Farmers of California, Inc.” The membership dues in 1938-1939 were \$1.00 per \$1,000 of pay roll, with minimum dues of \$1.00 per person. The organization also receives financial support from industries dependent upon agriculture.

According to the State organization, “The Associated Farmers originated as the result of disturbances which had tended to prevent the harvesting of crops and their movement to market * * *.” The nature of these “disturbances” and of the organization to which they gave rise, is indicated by the following excerpts from a pamphlet published by the State organization:

The need for the organization of the Associated Farmers was forced upon the attention of the people of California by riotous disturbances which occurred in the Imperial and San Joaquin Valleys in the fall of 1933 and the spring of 1934 * * * It was found * * * that the Imperial and San Joaquin Valley disturbances had been deliberately fomented by agitators who were less interested in the welfare of the workers than in the overthrow of our American system of government and society. This activity was directed to the destructive purpose of crippling agriculture and driving the individual farmers out of existence and not to the end of solving the mutual problems of farmer and worker so that both might prosper. * * *

The Associated Farmers is not a rival of nor in competition with any other farmer organization. It originated out of necessity to combat the subversive and radical activities which threatened the very life of agriculture. *The basic activities of the Association are agricultural labor relations and information and education*⁷ which will aid in thwarting the activities of those who are willing or anxious to de-

⁷J. B. Boyett, president of the Associated Farmers, questioned at the hearing as to what the organization's educational activities in the field of labor relations, tending to maintain law and order, consist of, testified:

I feel if a man has a camp on his ranch and a group of men there, those men are here, no doubt, due to unfortunate circumstances, and they don't have access to the papers and the public press; and about the only man he (sic) contacts is a labor organizer. * * * I might state that in my camp last year, last fall, every Monday morning the C.I.O. organizer pitched a bundle of trashy literature over into my camp asking those boys to strike; and immediately after doing so they could get all kinds of State assistance, Federal assistance, by simply for the asking.

I talked to them and told them that it was subversive. They were satisfied with the work, as were other camps in the community. There was no dissatisfaction. * * *

I feel that the Associated Farmers can do a great deal in combating that type of subversive activity, what I call Communistic activity. It is tearing down, not building up. Any employee should be permitted to discuss the problem with his employer at any time.

stroy our American system of government and society. * * * (Italics added)

* * *

Experience has shown that more than 90 per cent of the labor disturbances in farming areas of California during the last several years have been originated or fomented by * * * radical agitators * * *.

California farmers have met this threat by organizing and by cooperating with peace authorities for the maintenance of law and order. * * *

The members of the Associated Farmers are willing to meet with *their employees* to discuss wages and working conditions, and are anxious to find solutions to the many problems confronting the farmers and the workers, *but will not deal with radical organizers with destructive purposes.* (Italics added.)

Among the several items enumerated in the Associated Farmers' "Declaration of Policy for Agricultural Labor" are the following:

4. That appropriate steps be taken, through legislation, or in other proper ways to bring about responsibility on the part of labor organizations, corresponding with that imposed on employers.

* * *

12. Membership in any organization is not necessary in order to work in agriculture either in producing or distributing or preparing for market of agricultural commodities, and employees in agriculture should be free to meet with and bargain with their employers, collectively or individually, whether or not such employees are members of any organizations.

C. The Exchange

The Corcoran Telephone Exchange is a California corporation engaged in the business of furnishing telephonic communication in the city of Corcoran where it maintains 139.9 miles of telephone wires. Its office and switchboard are located in Corcoran. The Exchange furnishes the only telephone service available to the residents and business establishments of Corcoran.⁸ The Exchange has 300 subscribers, the "largest" of these, according to the testimony of its president, C. H. Glenn, being the Boswell Company. Among its other subscribers are the Western Union Telegraph Company and the Atchison, Topeka and Santa Fe Railroad.

Long-distance communication between local telephone stations operated by the Exchange and stations at points outside of the city of Corcoran or the State of California is offered to the Exchange's customers through the joint facilities of the Exchange

⁸The Pacific Telephone and Telegraph Company maintains telephone stations in Kings County, the nearest of these being at Angiola, California, 6 miles from Corcoran.

and the Pacific Telephone and Telegraph Company, a Bell System company.⁹ Pursuant to an "independent telephone connection agreement" between the Exchange and Pacific Telephone and Telegraph Company, the latter company maintains a cable of telephone wires connected to the Exchange's switchboard in Corcoran. Incoming and outgoing toll calls are transmitted over these wires and the charges therefor, collected by the Exchange from its subscribers, are prorated between the Exchange and the Pacific Telephone and Telegraph Company. During the year beginning December 21, 1937, the gross income of the Exchange, after deducting the Pacific Telephone and Telegraph Company's share of toll charges and taxes collected from subscribers, was \$11,286.11. Of this amount, \$1,574.54 represented the Exchange's share of toll charges collected. During the same period the Exchange handled 35,558 toll calls of which 77, yielding an income to the Exchange of \$177.13, were calls to points outside the State of California.

The Exchange challenges the Board's jurisdiction, contending that its interstate business as reflected in the data set forth above is of small proportions. However, the Exchange furnishes the only medium of telephonic communication available

⁹The Pacific Telephone and Telegraph Company is a directly controlled subsidiary of American Telephone and Telegraph Company which maintains world-wide communication facilities.

to the business establishments of Corcoran, California. At least three of its customers are engaged in interstate commerce. Telephone service, both local and long distance, is so indispensable to the conduct of ordinary business affairs that its interruption in a community like Corcoran would necessarily burden and obstruct commerce. Such burden and obstruction, stemming from unfair labor practices prescribed by the Act, the Board is empowered to prevent.

II. The organizations involved

Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L., is a labor organization, chartered by the American Federation of Labor, admitting to its membership employees of the Boswell Company.

The J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, is an unaffiliated labor organization, admitting to its membership employees of the Boswell Company at its Corcoran and Tipton plants.

III. The unfair labor practices

A. The Boswell Company

1. The organization of the Federal; interference, restraint and coercion.

The Boswell Company employs approximately from 45 to 189 production employees in its ginning and milling operations at Corcoran, California, a small town located in Kings County, in the San Joa-

quin Valley. The volume of its production and the number of its employees fluctuate seasonally, reaching an annual peak in October or November during the cotton-picking season, and declining to a low point in April of each year. From 45 to 55 old and experienced employees occupying key positions are kept on the pay roll doing repair work and other odd jobs when the gins and the oil mill are closed, but most of the employees are laid off between seasons. Owing to a shortage in the cotton crop in 1938, the ginning and milling season of 1938-39 was a short one. During that season the Boswell Company operated 4 of its gins only one shift daily instead of running 6 gins 24 hours daily, as it had done during the preceding year and employed at the peak of the season, during the week ending October 27, 1938, only 86 production employees as compared with 189 employed at the peak of the 1937 season. During the 1938-39 season the Company operated its gins from September 30, 1938, to January 24, 1939, and its mill, for the pressing of seed from cotton picked in 1938, from October 24 to November 15, 1938, and from January 5 to 12, 1939. Thereafter until the time of the hearing the mill was operated on three separate occasions for a total of 9 days. During the preceding season the gins had been operated until late in February 1938, while the mill had been in operation from September 20, 1937 to March 7, 1938, from May 3 to 17, 1938, and from July 1 to September 27, 1938.

The Federal had its inception during the period

between the closing of the Boswell Company's gins in February 1938 and the commencement of the next ginning season. As early as January or February 1938 James Gilmore, an employee at the Boswell mill, had spoken to fellow employees about organizing a union. Early in March 1938 E. F. Prior, an American Feberation of Labor organizer, interested O. L. Farr, a Boswell employee, in the possibility of organizing employees at the Boswell Company's Corcoran plant in a union to be affiliated with the American Federation of Labor. Prior did not approach other employees until after the Boswell mill was reopened in July. On July 13 he held an organizational meeting in the American Legion Hall in Corcoran, to which he invited some 30 Boswell employees. Only six or eight persons attended. Among these were Clyde Sitton, a Boswell employee and nephew of Gordon Hammond, the superintendent of operations at the Boswell Company's Corcoran plant, Bill Robinson, a supervisory employee of the Company,¹⁰ and Gilmore.

On September 2, 1938, Prior, in an interview with Louis Robinson, a director of the Boswell Company and its general manager of operations in the San Joaquin Valley, Gordon Hammond, the superintendent of the Corcoran plant, and William Boswell, a director of the Company in charge of farming and cattle operations in the region, indicated his intention of organizing a union among the Bos-

¹⁰See p. 11, *infra*.

well employees and his desire to avoid any "misunderstanding" with the Company. In the course of the discussion, Robinson advised Prior that if he were attempting, like Prior, to organize a union he would approach the "key men" employed by the Boswell Company rather than a few "radical, ignorant, casual . . . part-time workers." Questioned by Prior, Robinson indicated that he was referring to Gilmore as one of the latter group. On the same day Prior obtained applications for membership in the Federal from Farr and several other Boswell employees. During September and October the Federal's organizing campaign gathered momentum and the interested employees held meetings at the homes of Farr and another Boswell employee. The Federal was formally established on November 5, when its charter was installed and officers were elected. L. A. Spear became president, R. K. Martin, secretary, and Farr, vice president.¹¹

Immediately following the organizational meeting conducted by Prior in July 1938, the Boswell

¹¹In addition to the three officers, the following employees were named as members in the Federal's charter: H. N. Wingo, George Andrade, Manuel Escobedo, and Pete Galvan. Boyd Ely joined the Federal early in September. Gilmore was a member of the Federal, but the evidence does not reveal when he joined. Elgin Ely, Walter Winslow, E. C. Powell, W. R. Johnston, and Stephen Griffin joined the Federal in November. Eugene Ely, a brother of Boyd and Elgin, became a member in January. In addition to these 15 persons whose membership in the Federal is evidenced by their own testimony or by the Federal's charter, 5 other Boswell em-

Company inaugurated a course of conduct tending to obstruct the formation and growth of the Federal. The Company's hostility to the Federal was initially expressed in the form of statements to employees at the plant, disparaging the Federal and threatening employees with loss of their jobs if they adhered to it.

On July 13, the day of Prior's meeting, Boyd Ely, who subsequently joined the Federal, remarked to certain fellow employees at the Boswell plant that he was thinking of attending the meeting to be held that night. Ely did not attend the meeting, but on the morning of July 14, as he was entering the plant, Tom Hammond, a supervisor of operations in the gin, stopped him and asked him if he had joined the Federal on the previous evening. Ely replied in the negative, whereupon Hammond remarked that the Federal was "a no-good bunch trying to run somebody else's business." A few days later Joe Hammond, a supervisor of operations in the mill, told George Andrade, who later became a member of the Federal, while Andrade was at work, that the Company would not tolerate a union, would not recognize it, and would close the mill if a union gained a foothold in the plant. He asked Andrade whether the Federal would feed him after the mill

ployees were mentioned by Board witnesses as being members of the organization. These were: Joe Briley, Elmer Eller, Lawrence Galvan, Ignacio Galvan, and Andrew Galvan. Lawrence, Ignacio, Andrew, and Pete Galvan, and Manuel Escobedo never attended meetings of the Federal.

was closed. Joe and Tom Hammond asked Farr on several occasions whether he was a member of the Federal. On one occasion Tom Hammond asked Farr who the other Federal members were, and advised Farr to "go where there was a union," since the Boswell Company did not want a union at its plant. During August 1938 Joe Hammond asked H. N. Wingo, who later became a charter member of the Federal, while the latter was at work in the mill, if he had joined the Federal. On another occasion, Joe Hammond asked Wingo "how the union was getting along" and remarked that if the men desired to belong to a union they should go to work elsewhere instead of trying to organize a union at the Boswell plant. In September 1938 just before the seasonal closing of the mill, Joe Hammond told Farr that he could not "use" either Farr or Martin in the mill in the future. Farr remarked that he had always worked in the mill when it operated in the past and Hammond replied, "But you never belonged to a union before this time." At about the same time Tom Hammond told Martin that if a union should gain a foothold among Boswell employees, the Company would "lock [the plant] up and shut the door."

As stated above, the Boswell Company's oil mill was closed on September 27, 1938. The gins were placed in operation beginning on September 30. During the first 2 weeks of October, Spear, Farr, and Martin, as a committee representing the Federal, called upon Gordon Hammond to discuss a

schedule of working hours for the coming season. During this conference Spear told Hammond that prospective Federal members were being intimidated and Hammond replied that he had not authorized "anything like that." Spear then asked Hammond if a notice to employees might not be posted in the machine shop at the plant, stating that the Company would not discriminate against its employees if they wished to join the Federal. Hammond declined to allow such a notice to be posted.

On or about October 15 Bill Robinson, a supervisor in the gins, asked Andrade whether he belonged to the Federal and, upon receiving an affirmative reply, stated that a union would not help the employees of the Boswell Company and that if an employee wanted to belong to a union he should go to a place where a union was already established. About a week later Robinson stated to Elgin Ely, who later joined the Federal, that Andrade was "working on borrowed time" because he was a union member, and that other employees with whom Ely was acquainted were "in the same boat." One of these, Robinson indicated, was Martin. On or about November 6 or 7 Tom Hammond asked Stephen Griffin, who joined the Federal about a week later, whether he had joined the Federal, and remarked that the Federal was "the worst thing that had ever happened here." He advised Griffin not to join it. On November 15 Tom Hammond twice remarked to Walter Winslow, a Federal member, that the mill was being closed that day "on account of the union." The mill, which had been reopened on October 24, was closed on

November 15 and two Federal members, Boyd Ely and Walter Winslow, were laid off together with other employees in the mill.

On November 17 Prior and a Federal committee consisting of Spear, Farr, and Martin conferred with Gordon Hammond and requested that he reduce working hours in the gins from 12 hours to 8 in order to spread employment and prevent further lay-offs. During that interview Spear told Gordon Hammond that Tom and Joe Hammond were discouraging membership in the Federal, and requested that this conduct cease. Gordon Hammond stated that he had instructed Tom and Joe Hammond not to talk about the Federal and that they had no "authority" to engage in anti-union activities inasmuch as they lacked the authority to hire and discharge employees at the plant. Griffin, Johnston, and Elmer Eller, Federal members then working at odd jobs, were laid off that day. The circumstances surrounding Griffin's and Johnston's lay-offs, as well as those of Boyd Ely and Winslow, mentioned above, are considered in Section III, A, 2, *infra*.¹²

The Boswell Company does not deny the foregoing facts with respect to the anti-union conduct of Tom Hammond, Joe Hammond, and Bill Robinson, but it contends that it is not responsible therefor. This contention is without merit. Notwithstanding the testimony of Louis Robinson and Gordon Hammond indicating that no one at the Boswell Company's Coreoran plant except Gordon Hammond is given

¹²No evidence was introduced as to Elmer Eller, whose case we dismiss herein.

the title of "foreman" or has the authority to hire and discharge employees, it is clear that Tom and Joe Hammond and Bill Robinson are supervisors¹³ who direct the work of the rank and file employees in the plant. The employees in the gins and mill are accustomed to receiving the Company's orders from these individuals and, in consequence, reasonably regard them as representing the Company in its relations with its employees. The statements of Tom and Joe Hammond and Bill Robinson, made to their subordinates at the plant during working hours, indicating that the Company was actively opposed to the Federal and might punish its employees for engaging in union activities, necessarily interfered with the employees in their self-organizational efforts.¹⁴ It is immaterial that, as the Boswell Com-

¹³For a detailed discussion of the duties of these and other supervisors and their relationship to the other employees, see Appendix.

¹⁴In the respondents' brief supporting their exceptions to the Intermediate Report, the Company inferentially denies this conclusion, pointing to the fact that all the employees who testified to the anti-union activity of Tom and Joe Hammond and Bill Robinson were not deterred thereby from joining or remaining in the Federal. There is no merit to this argument. *Matter of Consumers' Power Company*, a corporation, and Local No. 740, United Electrical, Radio & Machine Workers of America, 9 N. L. R. B. 701, enf'd. *Consumers Power Company v. National Labor Relations Board*, 113 F. (2d) 38 (C. C. A. 6); cf. *National Labor Relations Board v. Brown Paper Mill Company, Inc.*, 108 F. (2d) 867, cert. den. 310 U. S. 651, enf'g *Matter of Brown Paper Mill Company, Inc., Monroe, Louisiana and International Brotherhood of Paper Makers*, affiliated with the American Federation of Labor, etc., 12 N. L. R. B. 60.

pany claims, Tom and Joe Hammond and Bill Robinson were not expressly authorized to intimidate and coerce the employees of the Company with respect to their union activities. In view of the supervisory positions held by these individuals, the Company is responsible for their conduct above described.¹⁵

Moreover, after the Federal had complained to the Boswell Company of the activities of its supervisors, the Company failed to take any effective measures to stop them from interfering with the union activities of its employees, or dispel the employees' belief that its attitude toward the Federal was that imputed to it by Tom and Joe Hammond and Bill Robinson. Although Gordon Hammond testified that he had "spoken to" Tom and Joe Hammond there is no evidence that he employed more drastic means to require them to respect the employees' rights of self-organization. The facts demonstrate that his claimed reprimands were not taken seriously. As stated above, Gordon Hammond declined, early in October 1938, to permit posting of the notice suggested by Spear. Under these circumstances, the Boswell Com-

¹⁵International Association of Machinists, etc., v. National Labor Relations Board, 61 S. Ct. 83, reh. den. December 9, 1940, aff'g 110 F. (2d) 29 (App. D. C.), enf'g Matter of the Serrick Corporation and International Union, United Automobile Workers of America, Local No. 459, 8 N. L. R. B. 621; Consumers Power Company v. National Labor Relations Board, 113 F. (2d) 38, (C. C. A. 6), enf'g Matter of Consumers Power Company, a corporation, and Local No. 740, United Electrical, Radio & Machine Workers of America, 9 N. L. R. B. 701.

pany must be deemed to have ratified the illegal conduct of its supervisory employees.¹⁶

We find that by the foregoing statements and conduct of its supervisory employees, the Boswell Company interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Discrimination with respect to hire and tenure of employment.

Spear, Martin, Farr, Andrade, Wingo, Briley and
Powell

a. The evictions

On November 17, 1938, in the afternoon following the above-described conference between Gordon Hammond and the Federal representatives, Tom Hammond angrily accused Farr and Spear, who were at work in the gin, of "trying to get his job" by reporting his anti-union statements to Gordon Hammond, and remarked to Farr, "We are going to straighten this out tomorrow."

¹⁶See *H. J. Heinz Company vs. National Labor Relations Board*, 311 U. S. 514, aff'g 110 F. (2d) 843 (C. C. A. 6), enf'g *Matter of H. J. Heinz Company and Canning and Pickle Workers, Local Union No. 325*, affiliated with *Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor*, 10 N. L. R. B. 963; *Matter of Swift & Company, a corporation and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 641 and United Packinghouse Workers Local Industrial Union No. 300*, 7 N. L. R. B. 269, enf'd as mod., *Swift & Co. v. National Labor Relations Board*, 106 F. (2d) 87 (C. C. A. 10), reh. den. 106 F. (2d) 94.

On November 18 the following Federal members were employed at the plant: Spear, Martin, and Farr, as ginners; Wingo and Briley, as pressmen in the gins; Andrade, as a sack sewer, and Powell, assigned to hauling bales in the plant yard.¹⁷ By prearrangement, these employees wore their union buttons in the plant that day for the first time. Apparently in response to the Federal's suggestion, the working hours had been reduced, and Spear's gin was scheduled to start at 10 o'clock in the morning instead of at 7:00, the customary hour.

At 10 o'clock that morning, the power driving the gins was turned off and Bill Robinson and others sent the Federal members to the plant yard for "a little meeting," an anti-union demonstration in which a large number of the employees of the Company participated. Tom and Joe Hammond and Bill Robinson were present, as were Kelly Hammond, the night supervisor in the oil mill, and Oscar Busby, the head machinist. Rube Lloyd, another supervisory employee, loudly demanded that the union men be "thrown out" of the plant. The Federal members were heckled about their union affiliation and the disturbance culminated in three men seizing Spear, president of the Federal, and forcibly propelling him across the road to Gordon Hammond's office

¹⁷Pete, Ignacio, and Andrew Galvan, employees in the mill who were inactive members of the Federal, were also apparently working at the plant on November 18. All the other employees who were then Federal members had been laid off prior to November 18.

in the Company's office building. Someone in the crowd, meanwhile, proclaimed, "The Company is behind us."

Gordon Hammond was not in his office that day. After the crowd of employees entered the office building, someone demanded that Louis Robinson discharge the union men. Robinson, who had been in a nearby office, then appeared momentarily and ordered the employees in the crowd to return to work, saying that he would "straighten things out" presently.

The Federal members thereupon returned to their posts, but they were prevented from working. The power from the main power plant was not turned on; Kelly Hammond and Bill Robinson, accompanied by Joe Hammond, entered the gin building and turned off the motors driving the machine operated by one of the Federal members, and Robinson ordered another, Martin, not to start his gin. One of the Federal members appealed for help to Tom Hammond, supervisor of the gins, but Hammond walked away without assisting him. Bill Robinson then advised several of the Federal members to leave the plant, saying that this was a "suggestion" rather than an "order" and asserting that the other employees had refused to work with the union men. Spear, Farr, Martin, Andrade, Wingo, and Briley thereupon left the plant and went to Farr's house. These six employees together with Powell, who also left the plant shortly afterwards under the circumstances described *infra*, were the only active members of the Federal employed in the plant that day.

Farr telephoned to Louis Robinson and told him what had occurred, inquiring whether the Federal members should immediately return to work. Robinson replied in the negative, stating that he would "think the matter over" and notify the Federal members later of his decision.

After the employes had left the plant yard, Powell, who had witnessed the gathering and dispersal of the crowd, was ordered by Bill Robinson to go into the gin building and take the #4 press job. Powell discovered that this was Briley's job and told Tom Hammond that he was unwilling to take it. Hammond then directed Powell to take the #1 press. Upon ascertaining that that was Wingo's job, Powell again declined to perform the work, on the ground that he would be "scabbing." Bill Robinson then told Powell that he had better remove his union button before the other employees discovered that he was wearing it and "scattered up the ground with him." Powell thereupon left the plant and joined the other Federal members at Farr's house.

The Testimony of the Federal members who described the above occurrences was uncontradicted.¹⁸

¹⁸At the hearing, and in their exceptions and brief, the respondents impugned the credibility of Powell, upon whose uncontradicted testimony we base our findings respecting the circumstances under which Powell himself left the plant. We conclude, upon a consideration of Powell's entire testimony in the light of the other evidence tending to corroborate or discredit it, that his testimony is substantially worthy of credence. In this instance, he was believed by the Trial Examiner, who was in the best position to evaluate his credibility.

The Boswell Company does not deny that the Federal members were evicted from its plant,¹⁹ but it contends that it is in no wise responsible for the episode, claiming that its non-union employees, without authority from the Company, ousted the Federal members because they resented their presence and their organizational activities, particularly those which led to a reduction of working hours on November 18, 1938.²⁰ The facts, as revealed by the uncontroverted

¹⁹The Company claims, in its exceptions and brief, that the union men left the plant voluntarily; inferentially, it claims that they acted unreasonably in departing without notifying or appealing to Louis Robinson. Without speculating as to what might have happened if the union men remained longer at the plant, we hold that they acted reasonably in leaving the premises and then appealing promptly, as they did, to Louis Robinson. With the acquiescence and assistance of the Boswell Company's supervisors, the Federal members were being subjected to interference which rendered it impossible for them to work. They had already been confronted with a show of force. Under the circumstances, Bill Robinson's "suggestion" that they leave the plant was necessarily interpreted as a threat that further interference with their work, if not actual assaults, would ensue if they failed to comply therewith.

²⁰There is no evidence to indicate that the non-union employees were actually resentful of the Federal's action in requesting a reduction of working hours. Even if we assume, however, that this was the case, it does not absolve the Boswell Company from responsibility for the eviction of the Federal members, for the reason, among others, that the Boswell Company by its conduct described in Section III, A, 1, *supra* had encouraged an attitude of hostility to the Federal on the part of its non-union em-

evidence, are not susceptible of this interpretation. Bill Robinson and Kelly Hammond, both supervisory employees²¹ for whose anti-union conduct the Boswell Company is responsible, were the active leaders of the disturbance and the principal molesters of the Federal members. Tom and Joe Hammond were present in the crowd which heckled the Federal men in the plant yard, and they were in the gin building at the time when the Federal members were prevented from resuming their work. These supervisors made no attempt to restore discipline, if they did not actually incite and encourage the attack on the Federal members. Rube Lloyd, who was present in the crowd and who voiced the suggestion that the union men be bodily ejected, is another supervisory em-

²¹See Appendix.

ployees. See *Clover Fork Coal Co. v. National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6) enf'g *Matter of Clover Fork Coal Company and District 19, United Mine Workers of America*, 4 N. L. R. B. 202; *National Labor Relations Board v. Sunshine Mining Co.*, 110 F. (2d) 780 (C. C. A. 9), cert. den. 61 S. Ct. 447, rehearing den. 61 S. Ct. 619, enf'g *Matter of Sunshine Mining Company and International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1252; *Matter of General Motors Corporation and Delco-Remy Corporation and International Union, United Automobile Workers of America*, Local No. 146, 14 N. L. R. B. 113, enf'd *National Labor Relations Board v. General Motors Corporation*, 103 F. (2d) 306 (C. C. A. 7); *Matter of Hudson Motor Car Company and International Union, United Automobile Workers of America*, A. F. of L., 34 N. L. R. B., No. 100; *Matter of Weirton Steel Company and Steel Workers Organizing Committee*, 32 N. L. R. B., No. 179.

ployee for whose conduct the Boswell Company is responsible.²² It is thus apparent that representatives of the Company initiated, led, and countenanced the entire anti-union demonstration. The "ordinary" employees in the plant, in so far as they participated in the demonstration, acted on the assumption that "the company was behind them." We think that this assumption was correct.

Louis Robinson, himself, after ordering the employees who crowded into Hammond's office to return to work, failed to take any measures to stop the demonstration which was in progress. At the hearing his only explanation of his failure to "straighten things out" in the plant was that he learned of the departure of the Federal members from the plant before he considered it "the proper time" to execute his alleged pacific intention. At about 2 o'clock in the afternoon of November 18, Robinson reported the morning's episode to the president of the Boswell Company in a letter which depicted his attitude as one of partisanship against the Federal and sympathetic condonation of the acts of the individuals who had interrupted the operations of the plant and evicted seven employees.²³ Although Robinson as-

²²See Appendix.

²³The letter reads, in part, as follows:

For some time a Mr. Pryor representing himself as an organizer for the Vegetable Oil Workers' Union of Long Beach has been endeavoring to organize a local chapter of this union in our plant. He and his followers were never able to get enough members to form the union and after working several months they began to

served in this letter that misconduct on the part of the Federal members had caused the trouble, and that the 10 o'clock "meeting" was agreed upon by both union

"put the heat on" our employees in an effort to force in more members. This was done by offering to accept membership without charge and by threatening to "roll" the employees for their jobs if they did not join the union. The threat was made that soon the ginning season would be over that the non-union men fired and the union men retained in the jobs.

This morning at ten o'clock on their own volition, the employees, both union and non-union, agreed to have a meeting to discuss the matter. The three tentative officers of the local proposed chapter [the Federal] were at the meeting. According to the best information I could get, the meeting practically amounted to nothing but that the non-union men decided that the three tentative officers were making unnecessary disturbance and endangering their jobs. They therefore took the three union men and bodily threw them off the property. The employees then came to see me in a body and demanded that I fire the union men. They were pretty well worked up and I endeavored to calm them down and persuaded them to go back to work, but the non-union men evidently kept a little pressure on the union men and in a few minutes the union men left their jobs.

* * * About noon one of the tentative union officers called me on the telephone and told me he wanted to do the right thing and asked for suggestions as to what he should do. I replied that the Company also wanted to do the right thing and that I would have to give the matter some thought. While I was at lunch, this party called for me again and advised the switchboard operator that he could call again later in the afternoon. Up to this time he has not called.

and non-union employees, he was unable to testify definitely as to the information leading him to make these statements which, as an impartial inquiry would have revealed, were not in accord with the facts. Indeed, Robinson admitted at the hearing that he had made no "special investigation" to ascertain the origin of the disturbance. Nor did he discipline the employees who had staged the anti-union demonstration during working hours. At the hearing, when asked what action he had taken against the persons whom he described in his letter as having "bodily" ejected three union men, he testified, "I didn't discharge anybody and I didn't deduct any salary from them but we did register disapproval of that action." His method of registering disapproval, he testified, was "by the action of the Company, by talking to the men, and by posting these notices to show that we didn't approve * * *." He did not "talk to the men" in any assembly of employees called for the purpose of delivering a reprimand.²⁴ The

²⁴On cross-examination by the Board's attorney Robinson testified as follows:

Q. Did you talk to any single men regarding that incident of November 18, 1938?

A. I don't recall any particular conversation, but in talking with the men at times I let it be known that I did not approve of that action.

Q. Now, can you give us the name of a single man to whom you registered disapproval of the action of November 18, 1938?

A. I can't give you the name of a single man and tie it to a particular conversation because I don't remember any specific conversation.

“notices” referred to by Robinson were identified by him as a notice which he posted at the insistence of an agent of the Board who came to Corcoran to investigate charges of unfair labor practices filed by the Union on November 23. This notice reads as follows:

This company will not through its proper representatives or otherwise, restrain, coerce, intimidate or interfere with our employees’ right to self-organization and, furthermore, will not discriminate with reference to hire or tenure of employment because of affiliation with the American Federation of Labor or any other bona fide labor organization, as guaranteed by the National Labor Relations Act. This notice will be posted for a period of 15 days.

Robinson’s testimony reveals that his only purely voluntary act with reference to this notice was to amend the draft submitted by the Board’s agent by substituting the words “proper representatives” for the words “supervisory employees.”²⁵ The notice, at most, announced to employees that the Boswell Company, through whatever agents it professed to recognize as such, would refrain in the future from violating Sections 8 (1) and (3) of the Act. In view of the continued absence from the plant of the ousted employees and in view of Robinson’s leniency toward the persons who had led the November 18

²⁵Robinson testified that he construed “proper representatives” as referring only to himself and Gordon Hammond.

demonstration this notice cannot have impressed the employees as a sincere disavowal or condemnation by the Company of the anti-union activities of its plant supervisors.²⁶

We find that the Boswell Company, by the acts of its supervisory employees, by its failure to make any reasonable attempt to maintain or restore discipline in its plant on November 18, 1938, and by its subsequent condonation of the eviction of the Federal members from its plant, is responsible for the ouster of Spear, Martin, Farr, Wingo, Andrade, Briley, and Powell,²⁷ from their employment on November 18, 1938, because of their membership and activities in the Federal, and that it thus discriminated with

²⁶Cf. *Matter of General Motors Corporation and Delco-Remy Corporation and International Union, United Automobile Workers of America, Local No. 146*, 14 N.L.R.B. 113, enf'd National Labor Relations Board v. General Motors Corporation, 103 F. (2d) 306 (C.C.A. 7).

²⁷Although Powell was not subjected to so much personal molestation as were the other union members, he left the plant under Bill Robinson's threat that he would incur physical violence if he did not remove his union button. During subsequent conferences, discussed *infra*, when Prior sought to have the ousted Federal members reinstated, both the Federal and the Boswell Company representatives considered Powell as one of the Federal members who had been forced out of the plant. Like the others, he received his wages from the Company for November 18 and the subsequent period during which his job was open. We do not, therefore, distinguish Powell's case from that of the others on the basis of the variation as to the circumstances under which he left the plant.

respect to the hire and tenure of employment of said employees, and discouraged membership in the Federal. By this conduct, the Boswell Company interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

- b. The Boswell Company's refusal to reinstate the ousted employees.

Following the occurrence of November 18, 1938, none of the ousted Federal members, except Briley, was reinstated in the employ of the Boswell Company. Briley was reinstated within a few days after the evictions upon making application individually to Gordon Hammond.²⁸ Briley did not testify at the hearing. As we have found, the Boswell Company discriminated with respect to Briley's hire and tenure of employment on November 18, 1938, but since he was promptly reinstated and is not seeking relief, it will be unnecessary to order the Boswell Company to take affirmative remedial action with respect to him.

Although they were not working at its plant, the Boswell Company continued to pay to the other evicted employees their regular wages for the period from November 18 until the dates, a week or two later, when their jobs ended for the season with the cessation of the Company's 1938 ginning operations. It then notified them of the termination of

²⁸On or before November 28, 1938, Briley joined the Association, which we find, *infra*, to be dominated and supported by the Boswell Company.

their employment by registered letters, hereinafter described in more detail. The Company's conduct toward these six employees, individually and collectively, during the period from November 18 to the dates of the registered letters not only substantiates our conclusion that it condoned and adopted as its own the acts of its employees who had staged the demonstration of November 18, 1938, but also constituted further unfair labor practices. The complaint alleges that the Boswell Company by its refusal to reinstate to their positions the employees ousted on November 18 further discriminated against them to discourage membership in the Federal. [The Boswell Company denies this allegation in its answer to the complaint. In its exceptions to the Intermediate Report and its brief filed in support thereof the Boswell Company contends that it was "willing" to reinstate the ousted employees whenever there was work available for them, but that none of them applied for reinstatement after November 18, 1938, or offered to accept employment with the Boswell Company, except that Prior, on their behalf, "made the conditional offer that they must all be reemployed, or none of them would return." The Company also asserts, by implication, that its duty toward the employees in question was discharged by its action in paying them the sums which they would otherwise have earned as wages from November 18, 1938, until their jobs terminated for the season.

The Boswell Company is in error in assuming

that the evicted employees were obliged to take the initiative in seeking reinstatement. Immediately following the anti-union demonstration of November 18, for which it was responsible, the Company was under the affirmative duty to offer reinstatement to the employees who had been forced to leave their work, and to safeguard them by reasonable means against further molestation in its plant.²⁹ Its action in paying wages to them for the brief period which remained until the end of the season's operations, without restoring them to their regular positions of employment, obviously did not discharge this duty.

The record shows that not only did the Boswell Company fail to come forward with an offer to reinstate the employees in question, but also, contrary to its contention, it failed and refused to grant them reinstatement when they applied therefor. Its dealings with the Federal, as the collective representative of the evicted employees were as follows:

When Farr telephoned to Louis Robinson at 11 a.m. on November 18 and asked Robinson whether the Federal members should return to work, Robin-

²⁹See *Matter of General Motors Corporation and Delco-Remy Corporation and International Union, United Automobile Workers of America, Local No. 146*, 14 N.L.R.B. 113, enf'd *National Labor Relations Board v. General Motors Corporation*, 103 F. (2d) 306 (C.C.A. 7); *Matter of General Shoe Corporation and Georgia Federation of Labor*, 5 N.L.R.B. 1005, consent order enf'd *National Labor Relations Board v. General Shoe Corp.*, 99 F. (2d) 223 (C.C.A. 5).

son replied that he wanted time to "think the matter over" and that he would notify the Federal later of his decision. That evening Prior telephoned to Robinson and announced his intention of coming to Corcoran to attempt to "straighten the matter out." Robinson replied that he knew very little about the disturbance and that "before he did or said anything" he would await a report from the Company's employees, who were holding a meeting that night. This meeting, as we find in Subsection III A, 3 *infra*, was the first organizational meeting of the company-dominated Association.

On the morning of November 19 Prior, Martin, and Spear called upon Louis Robinson and Gordon Hammond. On that day, and for at least a week thereafter, there was work for all the ousted employees. Prior stated to Robinson and Hammond that he had come to discuss the anti-union demonstration of the preceding day, and to request the reinstatement of the employees in question. Robinson indicated that he would "feel out sentiment" among the employees in the plant, remarking that the situation was "tense" and that he must proceed with care to avoid another "flare-up." Prior requested that Robinson notify him promptly of his decision respecting the status of the ousted employees, and Robinson, implying that the matter was one to be decided by the officials of the Boswell Company at its Los Angeles office, disclaimed authority to expedite a determination by his superiors.

In only one material respect is the evidence con-

cerning this conference in conflict: Robinson testified that he stated to the Federal representatives that the ousted employees were at liberty to return to work at any time, that his purpose in "feeling out sentiment" among the other employees in the plant was merely to ascertain whether there was any necessity of furnishing special protection for the evicted employees, demanded by the Federal, but deemed unnecessary by Robinson. Prior, Martin, and Spear denied in their testimony that Robinson offered to permit the Federal members to return to work. It is unnecessary to resolve this conflict, since it is admitted by the Boswell Company that Robinson refused to agree to furnish the Federal members with special protection against further molestation while at work in the plant, and in view of the events of the preceding day and Robinson's statements as to the "tensity" of the situation, the evicted employees were justified in declining to return to work without a definite guaranty of protection.³⁰ Moreover Robinson's claim that he of-

³⁰Cf. Matter of National Motor Rebuilding Corp. and International Association of Machinists, District No. 15, A. F. of L., 19 N.L.R.B. 503; Matter of Dixie Motor Coach Corporation and Sunshine Bus Lines, Inc., and Brotherhood of Railroad Trainmen, 25 N.L.R.B., No. 98; Matter of Continental Oil Company and Oil Workers International Union, 12 N.L.R.B. 789, enf'd as mod., Continental Oil Company v. National Labor Relations Board, 113 F. (2d) 473 (C.C.A. 10); remanded to Board for determination of another issue, 61 S. Ct. 861; Matter of Weirton Steel Company and Steel Workers Organizing Committee, 32 N.L.R.B., No. 179.

ferred to reinstate the ousted employees is belied by the Company's entire course of conduct during the period of approximately 2 weeks subsequent to the interview of November 19, when work remained available for at least some of them.

On the afternoon of November 19, not having been notified of any decision by the Company respecting the status of the ousted employees, the Federal voted to boycott the Boswell Company's products. On November 23 Prior filed with the Board the original charge in this proceeding. Within the next few days an agent of the Board persuaded Robinson to post the notice to employees, disclaiming any intention to violate the Act, to which we have referred above. On November 25, 1938, Prior called upon J. G. Boswell, president of the Boswell Company, in Los Angeles, and informed Boswell that the Federal desired to settle its differences with the Company. Boswell stated to Prior that the matter was entirely in the hands of the local management in Corcoran and that the position of the Company was expressed in the notice posted at the plant.

On November 26 or 27 Prior, accompanied by one or two of the ousted employees, again called at the Boswell Company's plant in Corcoran and interviewed Gordon Hammond.³¹ At that time the

³¹Prior testified that, accompanied by Spear, he had one conversation with Hammond, on November 27. Hammond testified to two conversations with Prior and Martin on November 26 and November 27. The conflict is immaterial.

ginning season was coming to a close, and the jobs in which Martin, Andrade, and Powell were employed on the day of the evictions came to an end on November 26. The Boswell Company did not notify the three affected employees of these facts, however, until November 28, when it sent to them registered letters announcing the "termination" of their "employment." When Prior saw Hammond on November 26 or 27, he renewed his request that the Company reinstate the ousted Federal members. Hammond indicated, generally, that the Company was willing to reinstate the employees in question, but that there was insufficient work for all of them at that time. He gave the Federal representatives no specific information as to which or how many of the six jobs in question were still available. Prior requested some clarification of the status of those employees whose work for the season might already have ended, and Hammond disclaimed authority to speak for the Boswell Company in regard to its future policy in this respect, remarking that he was himself "only a hired hand."

On November 28, Prior called upon Louis Robinson and stated that he had come to discuss the reinstatement of the evicted employees, remarking that the Federal now believed that a statement by "someone in authority" in the Boswell Company that "there was to be no arguments on the job" would be sufficient to protect the Federal members against molestation by the other employees. Robinson asked Prior to name the Federal members in question.

Prior named Spear, and Robinson made a penciled note of Spear's name, remarking that there might be a few days' work for him from time to time. Prior then named Martin. Robinson thereupon put down his pencil and said that Martin's gin had just closed down and that there was no work for Martin, indicating that his prospects of future reinstatement were indefinite. As to the precise terms of Prior's rejoinder to this statement, the testimony of Prior and Robinson is in conflict. Prior testified that he said that

if that was the attitude in regard to Mr. Martin, that we could not have *some understanding as to him*, as well as the rest of them, there was no need of naming any further, * * * (Italics added).

Robinson's version is that Prior said

Well, *if you don't have any work for Martin*, there is no use to talk any further. (Italics added).

Prior then took his departure. Without deciding precisely what words were used by Prior at the close of the interview, we are convinced, in view of all the circumstances, that Prior's testimony correctly reflects the substance of his statement to Louis Robinson, and that both men interpreted Prior's statements as a demand, merely, for some recognition by the Company of the right of all the evicted Federal members to be assured of the reinstatement to which they were entitled. We find that the evidence does not support the Company's claim that

Prior, on behalf of the ousted employees, made a "conditional" application for reinstatement.

On November 28, subsequent to the interview between Robinson and Prior,³² and on December 6, the Boswell Company sent to the ousted employees the afore-mentioned registered letters announcing the termination of their jobs. In the meantime, during the period when Prior was engaged in his unsuccessful negotiations with its officials, the Boswell Company demonstrated to its employees in various ways its determination to exclude from its employ persons who adhered to the Federal.

During this period Gordon Hammond interviewed several of the employees individually. Spear testified that on November 19 subsequent to the conference between Prior and the officials of the Boswell Company, Gordon Hammond sent for him and said to him, "Now Lonnie, you see what this union business has led to. You can't hope to put it over. * * * If you will drop this union business you can come back to work." According to Spear, Hammond made a similar offer to reinstate him if he would renounce the Federal, shortly after Spear received his registered letter of December 6. On both occasions, Spear rejected the offer. Powell testified that shortly after November 28, 1938, Gordon Hammond told him that he might have a job with the Boswell Company whenever he discovered that the Federal was "all hoocy," and "a bunch of fellows claiming

³²Robinson testified that he wrote these letters either just before or just after his talk with Prior.

something they couldn't back up," and that he replied that he intended to "string along" with the Federal. Farr testified that on November 26 he saw Hammond and told him that he was ready to return to work, that Hammond inquired whether his name was still O. L. Farr, and stated, "Well, under these conditions we can't use you at this time," remarking that he had told Prior earlier that day that he could not "use those fellows." Farr's job, according to the registered letter sent to him by the Boswell Company, did not terminate until a week subsequent to this conversation. Gordon Hammond denied having the conversation with Farr to which the latter testified. He admitted having conversations with Spear and Powell on the occasions to which they testified, but denied that he had made the conditional offers of reinstatement which they imputed to him and claimed that both Spear and Powell indicated to him, in the conversations held early in December, that they would not accept reinstatement without Prior's permission. Spear denied that he had made any such statement to Hammond. Powell, who denied on cross-examination by the respondents' counsel that he had received any instructions from Prior as to whether or not he should apply to the Boswell Company for reinstatement, was not interrogated as to whether he told Hammond that this was the case. Prior himself denied at the hearing, that he had directed the evicted Federal members not to accept reinstatement or apply therefor. We find the facts as to

these various conversations to be substantially as set forth in the above-described testimony of Spear, Powell, and Farr.

Meanwhile, between November 18 and 28, the Association was formed. As we find in Section III, A, 3, *infra*, this organization, the formation of which was dominated and interfered with by the Boswell Company, was organized principally for the purpose of exterminating the Federal. In the letter describing the evictions and the formation of the Association, which he wrote to his superiors on November 18, 1938, Louis Robinson clearly indicated that it was his intention to let a committee of the Association determine under what conditions the evicted Federal members should be permitted to return to work:

I have suggested to some of the cooler heads that at the meeting tonight [the organizational meeting of the Association on the evening of November 18] they appoint a committee to talk with the union men that were run off the job this morning and offer to allow them to come back to work on some basis as might be agreed on at the meeting of the employees tonight.

The record does not indicate whether any action was taken pursuant to this suggestion. Robinson's conduct with respect to the Federal's demands for the reinstatement of its members, however, must be interpreted in view of his opinion, revealed in this letter, that the question of "allowing" the evicted Federal members to return to work might

properly be decided by an organization formed, with the respondent's support, for the purpose of combating the Federal.

The registered letters notifying Martin, Andrade, and Powell of the termination of their jobs were sent to them on November 28. Registered letters substantially identical in wording were sent to Spear, Farr, and Wingo on December 6. Each of these letters, except Powell's, stated that on a certain date the operation on which the employee addressed had been working on November 18 was closed down. The letters continued: "* * * and your employment by this Company terminated at that time. Your closing pay check has been issued and will be delivered to you at the usual place in our Coreoran office." Powell's letter, alone, contained phraseology intimating that he might possibly be rehired by the Boswell Company in the future, stating, "* * * we will not need your further services *at this time.*" (*Italics added*). As Louis Robinson admitted at the hearing, it is not the practice of the Company to employ the medium of registered letters to notify its employees that they are laid off or that their jobs have terminated. The Boswell Company claims that its sole purpose in sending these letters was to convey to the employees in question the information, not available to them because of their absence from the plant, that the jobs in which they had been working on November 18 had come to an end, and Louis Robinson testified generally to this effect. The Company denies inferentially, that the letters were intended as notices of

discharge. We think, however, that it was inevitable that the recipients of these letters should conclude, as several of them testified they did, that the letters signified final dismissal. In view of the preceding events, the Company's failure to make any statement in the letters with reference to the prospective reinstatement of the employees addressed—employees who had been ousted from its plant and had since the ouster unsuccessfully sought reinstatement—necessarily indicated that the "termination" of their "employment" was final. We find that, in any event, these letters afforded the recipients reasonable grounds to believe that further application to the Boswell Company for reinstatement would be fruitless. Even if these employees had previously been subject to some obligation to apply to the Boswell Company for reinstatement in order to be entitled thereto, the Company's conduct in sending them the registered letters would have relieved them, thenceforth, of such obligation.³³

³³Although Powell's case might be distinguished from that of the others on the basis of the variant phraseology of the letter sent to him, the offer of reinstatement made to him by Gordon Hammond within a few days subsequent to the date of this letter was a conditional offer, an act of discrimination in and of itself, which excused Powell thenceforth from making application for reinstatement. See *Matter of The Kelly-Springfield Tire Company and United Rubber Workers of America, Local No. 26, et al.*, 6 N.L.R.B. 325; *Matter of Newark Rivet Works and Unity Lodge No. 420, United Electrical & Radio Workers of America, C.I.O. etc.* 9 N.L.R.B. 498.

Conclusions with respect to the Boswell Company's conduct subsequent to November 18, 1938

In summary, although the Federal members discriminatorily ousted from their jobs were not bound to apply for reinstatement, but were entitled to await an offer from the Company, they did make application through the Federal, until they were notified by the Company that their "employment" was "terminated." From November 18 until the time when the end of the ginning season afforded it an excuse for declining to restore the employees in question forthwith to their positions, the Boswell Company parried the Federal's rightful demand that it reinstate the employees in question. By its refusal, on November 19, to reinstate the Federal members except, as it claims, under circumstances requiring them to assume the risk of further molestation at their work, the Company left its duty to reinstate these employees unperformed. Thereafter, in dealing with Prior, it employed evasive and dilatory tactics. Robinson claimed that he needed time to "sound out sentiment," and referred Prior to his superiors in Los Angeles, who, in turn, informed Prior that the Corcoran officials of the Company had full discretion. Gordon Hammand, on November 26 or 27, withheld specific information as to any concessions which the Company may then have been prepared to make. Meanwhile, the Boswell Company at no time came forward with an offer to reinstate the employees in question dur-

ing the week when all their jobs remained open. On the contrary, by offering on November 19 to reinstate Spear, the Federal president, provided that he would renounce his affiliation with the Federal; by rejecting Farr's individual application for reinstatement on November 26, when work was still available for him; by assisting in the formation of the Association and delegating to it some authority with respect to reinstatement of the employees; and by declining to make any commitment with respect to the future employment of those Federal members whose jobs were ended for the season, the Company manifested its determination to exclude the ousted employees from positions at its plant so long as they adhered to the Federal.

On November 28 when Prior last discussed the reinstatement of the evicted employees with Louis Robinson, all these employees were still entitled to be offered reinstatement, effective immediately or as soon as work should again become available. This Prior justifiably demanded. Under the circumstances, Prior's refusal to discuss a settlement between the Federal and the Company except on the basis of some redress for all the Federal members who had suffered from the same act of discrimination gave the Boswell Company no warrant to assume that a bona fide offer on its part to perform its remedial duty toward the ousted employees would be rejected by them. Nor, after sending the registered letters of November 28 and December 6, can the Boswell Company justifiably claim that the

failure of the ousted employees thereafter to apply for reinstatement signified a voluntary surrender by them of their employment. Its offers of reinstatement made to Spear and Powell shortly after the registered letters were dispatched, were conditional offers, the rejection of which did not affect the remedial rights of Spear and Powell.³⁴

We find that by its conduct following the evictions the Boswell Company refused to reinstate Martin, Farr, Spear, Andrade, Wingo, and Powell because of their membership in the Federal, thus further discriminating with respect to their hire and tenure of employment and discouraging membership in the Federal. By this conduct, the Boswell Company interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Elgin Ely

The amended complaint alleges, and the Boswell Company's answer denies, that the Boswell Company discriminated with respect to the hire and tenure of employment of Elgin Ely by reducing his pay from 40 cents to 35 cents per hour, on or about November 3, 1938, and by refusing to reemploy him on or about December 2. Ely was first employed

³⁴Matter of Carlisle Lumber Company and Lumber and Sawmill Workers' Union, Local 2511, Onalaska, Washington and Associated Employees of Onalaska, Inc., Intervenor, 2 N.L.R.B. 248, enf'd, National Labor Relations Board v. Carlisle Lumber Company, 94 F. (2d) 138, (C.C.A. 9) cert. den. 304 U. S. 575, and 99 F. (2d) 533, cert. den. 306 U. S. 646.

by the Boswell Company in the fall of 1936 and, with intermittent lay-offs, worked thereafter at various positions, both in the gins and the mill until November 15, 1938. After one lay-off he was rehired on October 24, 1938. Ely testified that he earned 40 cents per hour in October 1938, but the Boswell Company's records indicate that he actually worked for 1 day, October 24, as a press helper, at 35 cents per hour, then worked from October 25 through November 1 as the head pressman, at 40 cents per hour, resuming the press helper's job at 35 cents per hour on November 3. Gordon Hammond testified that Ely took the head pressman's job for 1 week because of the temporary absence of Joe Briley, the regular incumbent; that Ely went back to his regular job upon Briley's return; and that in each job he received the usual rate of pay for the job. There was no evidence to contradict Hammond's explanation of Ely's reduction in pay. We find, as did the Trial Examiner, that the Company did not discriminate against Ely by reducing his rate of pay on November 3, 1938.

Ely joined the Federal on November 11. On November 12, when he was paid for the week ending November 10, he discovered the above-mentioned reduction in his rate of pay and asked Tom Hammond, his supervisor, the reason for this. Hammond remarked to Ely, "Maybe the union had something to do with it . . . Maybe you should get your committee together and go up to the office and see if they couldn't find out something about it." On or about November 5, while at work, Ely had re-

ceived an injury to his thumb. An infection set in, and he was advised by his physician not to work until he recovered. On November 16, Ely reported this to Tom Hammond, who excused him from work. Ely was released for work by his physician on or about December 2, 1938. He did not then apply to the Boswell Company for reinstatement, however, because he had received from the Company a registered letter dated November 28, telling him that the No. 4 gin, on which he had been employed prior to November 16, had been closed on November 26, and that his "employment by this Company terminated at that time." This letter was identical with those sent by the Boswell Company on November 28 and December 6 to the Federal members who had been ousted from the plant on November 18. The Boswell Company introduced no evidence to show that it had ever before employed the medium of registered mail to notify employees absent from work on account of illness that they were laid off for the season. Nor did the Boswell Company have, in Ely's case, the pretext for sending such formal notice which it advanced to explain the other registered letters, namely, that the recipients were drawing their wages, although actually performing no work at the plant.³⁵ The Company, by sending Ely such a letter, indicated that

³⁵Ely's letter stated, as did the other letters, that his closing pay check had been issued and would be delivered to him at the office, but his Social Security record indicates that his last pay check was for the week ending November 17, 1938.

it considered Ely to be in the same class, and to merit identical treatment with the other Federal members whom it had ousted from its plant and thereafter refused to reinstate. In view of the entire background, the Company's acts of discrimination against the ousted employees, and its general antipathy to the Federal, we conclude that the Boswell Company intended, by its letter to Ely, to deter him from seeking reinstatement upon recovering from his injury. The letter had this effect.

The Boswell Company claims that it did not, as the Trial Examiner found, "discharge" Ely on November 26, because Ely would in any event have been laid off on that date, when the No. 4 gin was closed. Although it appears that Ely would probably have been laid off on November 26 in the normal course of events, it is clear that, in the absence of a purpose to deprive Ely of the expectancy of re-employment which he would normally have had, following an ordinary seasonal lay-off, the respondent would not have chosen the peculiar medium which it employed to notify him that his job had ended. Regardless whether the Boswell Company considered its letter to Ely a notice of discharge, it deliberately conveyed to Ely the impression that, as a member of the Federal, his employment by the Boswell Company was "terminated"—finally. We do not distinguish such a "lay-off" from a discriminatory discharge. We find, as did the Trial Examiner that on November 26, 1938, the Boswell Company discriminated with respect to the hire and tenure of employment of Elgin Ely, and thereby discouraged

membership in the Federal and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

James Gilmore

The complaint, as amended, alleges that the Boswell Company discharged James Gilmore on or about May 17³⁶ and refused to reinstate him on or about July 1, 1938, because he attempted to form a labor organization among its employees. The Boswell Company denies this allegation in its amended answer. The Trial Examiner found that the Boswell Company discriminated against Gilmore by refusing to reinstate him.

Gilmore was first employed by the Boswell Company in 1928 and worked for it, with intermittent lay-offs, until July 1930. At that time he obtained other employment, then returned to the employ of the Boswell Company in September 1931. He continued to work for the Company until 1938, again with occasional lay-offs, in the mill and at various odd jobs in the plant. During the first 3 months of 1938 Gilmore was steadily employed in the oil mill. He was laid off on March 19, subsequent to the closing of the mill, and was reemployed during the next operation of the mill from May 2, to 17, when the mill was again closed, and he was laid off together with other employees. Gilmore was not

³⁶The amended complaint originally alleged that this discharge occurred on or about March 20, 1938. The allegation was amended with respect to this date by the motion made by counsel for the Board to conform the pleadings to the proof.

thereafter rehired, although the Boswell Company reopened its mill on July 1, 1938.

The Boswell Company contends that Gilmore never applied for employment subsequent to his lay-off in May. Gilmore testified without contradiction, however, that a day or two before the mill was reopened in July, he spoke to Julius Hammond, a supervisor employed by the Boswell Company in the mill, whom he had been accustomed to consult, to "find out when we were going to start back to work . . ." and that Hammond asked him what he was "going to do" for a job and stated that the Boswell Company had no work for him. Gilmore also testified that shortly after the mill reopened in July, he spoke to Gordon Hammond, who told him that his work had been satisfactory, but that there was no work available for him. Gilmore admitted, at the hearing, that he saw Gordon Hammond twice subsequently, during the summer of 1938, and that on neither occasion did he ask Hammond for work.

During the winter and spring of 1938 Gilmore had attempted to interest fellow employees of the Boswell Company in the formation of a union. During July he gave Prior some assistance in organizing the Federal and became a member of that organization.³⁷

³⁷Gilmore testified that in June 1938 Gordon Hammond, whom he encountered near the Boswell plant, accused him of "sneaking around" for the purpose of "signing up" employees in a union. Hammond, in his testimony, gave a contradictory version of this conversation. We find it unnecessary to resolve the conflict.

As the Trial Examiner found, the evidence does not indicate that Gilmore's lay-off on May 17, 1938, was discriminatory. Although the evidence affords some ground for the suspicion that his failure to obtain reinstatement in July was due to his union activity, we are not convinced that this was the case. It appears from Gilmore's own testimony that he was told by both Gordon and Julius Hammond, at or about the time when the mill was reopened, that there was insufficient work available to afford him employment, and there is no evidence to indicate that these statements were not true. Later, Gilmore failed to ask Gordon Hammond for work on several occasions when he had opportunity to do so. As we find in connection with the cases of Boyd Ely and Winslow, discussed *infra*, it is not clear that the Boswell Company customarily recalls its employees to work, upon resuming operations at its plant, in the absence of application by them. In view of the inconclusive character of the evidence, and the fact that the Boswell Company had rehired Gilmore in May, subsequent to the period when he first attempted to arouse interest in organizing a union, we find that the Boswell Company did not discriminate with respect to the hire and tenure of employment of Gilmore.

Boyd Ely and Walter Winslow

The employment of Boyd Ely and Walter Winslow with the Boswell Company terminated with the closing of the mill, where they were working, on November 15, 1938. The complaint alleges, and the

Trial Examiner found, that they were then locked out and were refused reemployment when operation of the mill was resumed on January 5, 1939, because of their Federal membership and activities.

Boyd Ely was first employed by the Company as a hay cutter in July 1936. In February 1937 he received an increase in pay and was transferred to the mill. In May 1937 he quit his job and obtained employment elsewhere for 2 or 3 months. In September 1937 he was rehired by the Boswell Company and was steadily employed thereafter until the middle of March 1938. He was again employed by the Company from the week of April 14 until the mill was closed in May. He was reemployed in the mill during the first week of July 1938, and was laid off on September 28, when the mill was again closed. On or about October 15 Ely was rehired in the mill, at an increased rate of pay, and worked until November 14. Ely reported for work on the night shift on November 14 and found the mill closed. He asked Joe Hammond, the supervisor of oil-mill operations, what was wrong, and Hammond replied that he did not know. Ely applied to Joe Hammond for work on the following day, but was not rehired.

Ely joined the union on September 5, 1938. The Boswell Company knew of his Federal affiliation at the time when it reemployed him in October 1938.

Winslow was first employed by the Boswell Company as a hay cutter, in September 1935. He worked for the Company until 1938, with intermittent lay-

offs, performing various jobs in the cattle corral, seed house, oil mill, warehouse, and plant yard. In 1938 he was steadily employed until the mill was closed in March, and he was again employed during May and July. During the summer months he was employed only part time, chopping weeds in the plant yard. He was again employed steadily in September; after about 2 weeks' work in the gins, he was transferred to the mill, where he worked until November 15. On that day he was laid off by Joe Hammond.

Winslow applied for membership in the Federal on November 9 and attended a Federal meeting on November 11. On or about November 15 Tom Hammond asked him whether he belonged to the Federal and he replied in the affirmative. On November 15 Tom Hammond told Winslow "It looks like the mill is going to have to shut down on account of the boys joining the union." Later in the day he said to Winslow, "We are shutting the mill down tonight . . . on account of the union. Where are you going to place your card at any other place but here? We can't use you here at this plant and no place else."

We have found in Section III, A, 1, *supra*, that Tom Hammond's remarks to Winslow on November 15 constituted an unlawful interference by the Company with the rights of its employees guaranteed in Section 7 of the Act. Ordinarily we would regard such statements as these, addressed to a union member immediately preceding his lay-off, as persuasive evidence that the lay-off was discrimina-

tory. We are not convinced, however, that either Winslow or Ely was laid off because of his membership in the Federal. It is undisputed that the mill was closed and that other employees were laid off on November 15, 1938, when these two individuals were laid off. There is no definite schedule for the operation of the mill. The Boswell Company introduced evidence indicating that whether it mills cottonseed for the production of oil or stores it uncrushed, depends largely upon the condition of the market for cottonseed oil. With the exception of Tom Hammond's statements to Winslow,³⁸ there is no evidence to indicate that the closing of the mill on November 15, 1938, was other than a periodic closing normally incident to the Company's intermittent operations. As a result of previous closings, Ely and Winslow had each been laid off several times before. Although the Boswell Company first discovered Winslow's affiliation with the Federal shortly before it closed the mill on November 15, it had known for some time that Ely and other employees who worked in the mill had joined the Federal and had nevertheless reemployed Ely and the others in October when the mill was reopened for 3 weeks, giving Ely an increase in pay at that time. Under all the circumstances, we think that

³⁸Although Tom Hammond is a supervisory employee in the gins, the evidence does not indicate that his position with the Boswell Company is such that he would participate in a decision as to when to close the mill, or would be authoritatively informed as to the reasons for such decision.

the evidence is insufficient to prove either that the shut-down of the mill on November 15, 1938, was a lock-out to discourage membership in the Federal or that the lay-off of either Ely or Winslow at that time was discriminatory.

On January 5, 1939, the Boswell Company reopened its mill for a period of 1 week; thereafter, until the time of the hearing it operated the mill on three occasions for periods aggregating 9 days. It did not, on January 5 or subsequently, rehire either Ely or Winslow. However, neither applied to the Company for work subsequent to November 15, 1938. While they may have assumed with some warrant, in view of the evictions of November 18 and the Company's refusal to reinstate the evicted Federal members, that such application would be fruitless, their failure to obtain reemployment cannot be attributed to the Boswell Company in the absence of some specific act of discrimination against them. The evidence does not justify a conclusion that the Company's failure to offer them jobs on January 5 or thereafter was such a discriminatory act. Some of the Federal members employed by the Boswell Company testified that the Company had recalled them to work, from time to time, upon resuming its operations following the periodic shut-downs, but others testified to having secured reemployment after lay-offs by applying therefor to Gordon Hammond or one of his subordinates. As to certain of these employees, the practice had varied. Upon the basis of this evidence we

cannot find that it is the Boswell Company's established practice to notify its laid-off employees when work is available for them. Absent proof of some such custom obviating the necessity of applying for work after temporary lay-offs, since neither Ely nor Winslow applied to the Boswell Company for work subsequent to the shut-down of November 15, 1938, there is insufficient basis to conclude that they were discriminatorily refused reemployment when the mill reopened. We find that the Boswell Company did not discriminate with respect to the hire or tenure of employment of Ely or Winslow.

Stephen Griffin and W. R. Johnston

The amended complaint alleges and the Trial Examiner found that the Boswell Company discharged Griffin and Johnston on November 17, 1938, because of their Federal membership and activities. In its answer, the Boswell Company denies this allegation and alleges that Johnston and Griffin were laid off due to a seasonal decline in its operations.

Griffin was first employed by the Boswell Company, at hay baling and cattle feeding, in the summer of 1932. He worked for the Company, except for intermittent lay-offs, until 1936, when he purchased a hay baler from the Company.³⁹ For the next three seasons he baled hay as an independent contractor, working principally for the Boswell Company. In August 1938 he was rehired by the

³⁹This purchase was financed by a loan from the Boswell Company.

Boswell Company at the Corcoran plant for 2 days, cutting hay and feeding cattle. During the week of October 13 he was again hired by the Company, and worked steadily at the plant until November 17, 1938, when he was laid off. During this period he worked at various jobs, in the main at hauling planting seed.

Griffin joined the Federal on November 15 or 16, 1938. Tom Hammond, who had advised Griffin about 10 days previously to "stay out" of the Federal, learned on November 17 that Griffin had disregarded his advice. On that same day, Gordon Hammond laid off Griffin, stating that there was no more work, and remarking, "Some of the boys is getting it in their head that you boys are being laid off on account of the union, but there is nothing to that."

Johnston was first employed by the Boswell Company in the fall of 1937. He worked as a bale hauler until the end of January 1938, when he received an injury to his leg which incapacitated him for some time. In October he was rehired by the Company. He worked for 1 day in the branding pen, for about 7 days as a press helper, and during the last 2 weeks that he was employed, he sewed and sacked planting seed and hauled bales. He also was laid off on November 17 by Gordon Hammond, who told him that the lay-off was necessitated by the shortage of the cotton crop and lack of work, remarking that Johnston was not being laid off for union activity.

Johnston applied for membership in the Federal on November 7 and was initiated at a meeting held on the evening of November 16.

Gordon Hammond testified that he laid off Griffin and Johnston on November 17 because there was no more work for them. Evidence introduced by the Company showing that on November 17 all the cotton from which seed was to be saved for planting in the following spring had been picked, and that a large part of the planting seed had been sacked and hauled, tends to substantiate Hammond's testimony as to the reason for these lay-offs, inasmuch as both Griffin and Johnston had been engaged in handling plant seed during their last period of employment. Neither Griffin nor Johnston applied for reinstatement subsequent to November 17.

While, under all the circumstances, we do not consider Gordon Hammond's disclaimers of discrimination, in his conversations with Griffin and Johnston on November 17 as evidence that the Company had no discriminatory motive for laying them off, neither do we find, in view of the evidence supporting the Boswell Company's explanation of their lay-offs, adequate proof that the lay-offs did result from anti-union discrimination. We find that the Boswell Company did not discriminate with regard to the hire or tenure of employment of Griffin or Johnston.

Eugene Clark Ely

The complaint alleges and the Trial Examiner found, that Eugene Clark Ely was discharged by

the Boswell Company on January 30, 1939, because of his Federal membership. In its answer, the Boswell Company alleges that Ely was neither laid off nor discharged, but that he left its employ "of his own free will and accord."

Ely, a brother of Elgin and Boyd Ely, was first employed by the Boswell Company in September 1937. After a lay-off in March 1938, he was rehired in May, and worked for 2 or 3 weeks "running" plant seed. He was then again laid off and was rehired for 2 weeks in July, baling straw. Early in October he was hired again, and worked steadily until December operating a cotton drier in the gin. His rate of pay was increased within a few days after he was rehired in October. In December, when the gins were closed, Ely was transferred to the construction gang, and worked under Rube Lloyd's supervision on various construction jobs until the end of January 1939. On Saturday, January 28, he reported for work, but asked Lloyd for permission to take the day off because of pains in his shoulder. Lloyd granted this request, telling Ely to report on Monday and remarking that since it was raining there "wouldn't be much doing" that day. On Monday morning, January 30, Ely reported to Lloyd, who told him that there was no work for him, that "they" were "all through." About half an hour later Ely reported to Gordon Hammond that Lloyd had laid him off. Hammond told Ely that there might be some work for him to do "after awhile." Ely stayed at the plant for an-

other hour and a half and then left. There is no evidence indicating that Ely ever thereafter applied to the Boswell Company for work.

Ely had joined the Federal on January 2. He had previously joined the Association when it was formed, and attended several of its meetings. He testified that on Sunday, January 29, the day before he was laid off, he was seen by W. W. Boswell, a director of the Boswell Company, standing in front of an American Federation of Labor hall in Bakersfield, together with Martin, Johnston, Elgin Ely, Prior, and other Federal men. Boswell, in his testimony, denied that he had seen Ely on that occasion, that he had ever known Ely's identity prior to the hearing, and that he had ever noticed that there was an American Federation of Labor hall in Bakersfield.

We find it unnecessary to resolve the conflict in the evidence. Even assuming the truth of Ely's testimony, there is insufficient evidence to convince us that Ely was laid off because of his Federal membership. The testimony of Ely indicates that Lloyd had no work for him on January 30. Ely's departure from the plant following his conversation with Gordon Hammond, despite the latter's statement that there might be some work for him, appears to have been voluntary. Under the circumstances, we find that the Boswell Company did not discriminate with respect to Ely's hire or tenure of employment.

3. Domination of and interference with the formation and administration of the Association.

On November 18, 1938, within a few hours after

the above-described eviction of the Federal members from the Boswell Company's plant the Association had its inception. In his letter of November 18 addressed to the president of the Company, referred to in Section III, A, 2, *supra*, Robinson, after describing the evictions, stated:

The non-union men then appointed a committee and the committee went to the District Attorney for instructions as to the best method of procedure for them to follow. It is my understanding the District Attorney advised them that up to date they were in the clear and suggested that they think the matter over carefully and determine on the best possible method of handling the matter and that in the meantime, he would give the problem thought and continue to advise them. * * *

The non-union men have now called a meeting for tonight. Their thoughts seem to be running to the formation of a Company union as a protective union in preventing them from being forced into the A. F. L. or the C. I. O. The Caminol Company and the Lucerne of Hanford have both had the same trouble and this is the method they use in handling same. This is also true of the San Joaquin Light & Power Corporation. I have suggested to some of the cooler heads that at the meeting tonight they appoint a committee to talk with the union men that were run off the job this morning and offer to allow them to come back to work on some basis

as might be agreed on at the meeting of the employees tonight. That they take no action in forming a Company union but appoint a committee to investigate such a proposal and make recommendations back to a later meeting.

In amplification of the facts narrated in his letter, Robinson testified that at some time shortly after the union men had left the plant Rube Lloyd, Gordon Hammond's nephew, Clyde Sitton, and another employee came to see him in his office and asked him to advise them what they "should do in connection with the disturbance that had taken place." Robinson told them that they would have to seek advice elsewhere. Shortly after luncheon that same day Lloyd and Sitton, accompanied by Oscar Busby, the head machinist, told Robinson that a committee including Lloyd and others had been in consultation with the District Attorney of Kings County,⁴⁰ who had advised them to investigate the employees' associations which had been formed at the Caminol Company and the Lucerne Creamery.

That evening a meeting attended by over 50 Boswell employees was held in the Company's office building at the plant. Eugene Clark Ely, who attended this meeting, was informed of the meeting in the afternoon of November 18 by Tom Hammond, supervisor of operations in the gins, where

⁴⁰The district attorney's office is in Hanford, California, approximately 17 miles from Corcoran. Rand McNally World Atlas, 1936.

Ely was employed. Hammond told Ely that he, Busby, Sitton, and "Yankee" Roberson, a clerical employee, had gone to Lemoore⁴¹ that day to consult an attorney about forming a "company union."

At the meeting, Busby made a speech in which he stated that the Lemoore attorney believed that there was no reason why a "company union" would not "work" at the Boswell Company plant. The persons present at the meeting then signed their names on two blank sheets of paper. Among those who signed were Kelly Hammond and Bill Robinson, supervisors at the plant. Supervisors Tom and Joe Hammond also were present at the meeting.

While the meeting was in progress, one Parrish, an employee, accosted Elgin Ely in Gordon Hammond's presence at the Boswell plant, and told him to "go in the office and sign that paper" to "keep this God-damned A. F. of L. union out of here."

Louis Robinson admitted at the hearing that on November 18 he knew that Lloyd, Sitton, and Busby had called a meeting of employees to be held in the plant that evening and that these three employees had absented themselves from work to consult the district attorney. He testified, on cross-examination, that he did not expressly give his permission to Lloyd, Sitton, and Busby to leave their work that day, but that he would have given such permission if they had requested it, and that he did not reprimand

⁴¹Lemoore is approximately 25 miles from Corcoran. Rand McNally World Atlas, 1936.

mand them or order any deductions from their pay for taking time off from duty.

On November 28, at another meeting of Boswell employees, held in the American Legion Hall in Corcoran, the Association was formally organized and a constitution and bylaws were adopted. Seventy-six persons present at this meeting, including supervisors Tom, Joe, and Kelly Hammond and Bill Robinson, signed the constitution. At this meeting, also, the following officers of the Association were elected: president, J. W. Hubbard, the Boswell Company's "farm advisor" in Corcoran; vice president, Oscar Busby, head machinist at the Corcoran plant; secretary, "Yankee" Roberson, a clerical employee of the Company; treasurer, Samuel Brenes, the Boswell Company's senior bookkeeper and cashier. A "labor relations committee," consisting of Willoughby, the plant storekeeper, McKeever, an agronomist employed by the Boswell Company and Rube Lloyd, the construction superintendent, was also elected. Hubbard, the newly elected president, addressed the meeting, stating that he thought that "we were accomplishing quite a bit by this company union, and, if we would all stick together, he didn't see how it wouldn't work."

Eugene Clark Ely had been informed of this meeting by Roberson who handed him a notice during working hours at the plant. On another occasion when a meeting of the Association was scheduled, Eugene Clark Ely received a notice from Roberson and, in addition, was told by his supervisor, Tom

Hammond, that he "had better" attend if he desired to continue working.⁴² At that meeting, at which Busby and Roberson presided, the attorney who had been retained in connection with the organization of the Association expressed the opinion that "the company union should get along better with the company than the A. F. of L. or C. I. O."

The Association exists, according to its constitution, for the purposes, among others, of collective bargaining with the Company in respect of rates of pay, hours of employment, grievances, and labor disputes, and "To not interfere with the right of any member or members to present grievances individually to the management of the company." Membership in the Association is restricted to employees of the Boswell Company at its Corcoran and Tipton plants, other than "executives,"⁴³ who have been continuously employed by the Company for a period of 30 days or more. Control of the Association's af-

⁴²Although the evidence does not establish conclusively that the Boswell Company required of its employees membership in the Association, it is significant that the only persons identified at the hearing as one-time members of the Federal, who were employed by the Company at any time subsequent to November 18, were employees who joined the Association.

⁴³An "executive" is defined in the Association's constitution as "one who in his discretion makes decisions in the management of the Company or disputes over labor, wages, rates of pay, hours of employment or conditions of work arising between the employees of the Company and the Company."

fairs, including the power to veto amendments of the constitution and bylaws, and exclusive power to initiate proposals for strike action, is vested in a seven-man governing board consisting of the four officers and the members of the labor relations committee. Eligibility to serve on this board is restricted to those employees of the Boswell Company who have been continuously employed for a year or more, a group which includes only a minority of the plant employees. Strike action by the Association is also restricted by a constitutional requirement that if a strike is determined upon, the governing board shall give the president, secretary, and manager of the Company written notice of the Association's proposed action 10 days prior to calling the men out on strike.

At a meeting of the Association held on April 5, 1939, subsequent to the issuance of the complaint in this proceeding, the members elected new officers and adopted an amendment to the bylaws providing that membership in the Association constitutes repudiation of membership in any other labor organization. Following this meeting the secretary wrote a letter to the Boswell Company stating that the Association had a list of unemployed members and requesting the Company to "get in touch" with the Association when it required laborers. This letter concluded,

I do, however, wish to emphasize the fact that this is merely a request. We are not agitating for a closed shop but we do want to do every-

thing that is reasonable and just to keep our members employed.

Far from "agitating for a closed shop," the Association has never bargained with the Boswell Company. Although, in a letter to the Company dated November 29, 1938, notifying the Company of its existence and of the names of its officers, the Association claimed to represent 95 per cent of the Company's employees in Corcoran, it has apparently not asked for recognition as exclusive bargaining representative of such employees. Not only has it failed to obtain a contract with the Boswell Company relating to wages or working conditions, but also it has never appointed representatives to discuss these subjects with the Company.

Conclusions with Respect to the Association

The Boswell Company's relation to the Association cannot be judged except in the light of its attitude toward the Federal.⁴⁴ While the Company countered the Federal's initial efforts toward organiza-

⁴⁴International Association of Machinists, etc. v. National Labor Relations Board, 61 S. Ct. 83, reh. den. Dec. 9, 1940, aff'g 110 F. (2d) 29 (App. D. C.), enf'g Matter of The Serrick Corporation and International Union, United Automobile Workers of America, Local No. 459, 8 N. L. R. B. 621; National Labor Relations Board v. Link-Belt Company, etc., 311 U. S. 584 rev. mod. of Board's order in 110 F. (2d) 506 (C.C.A. 7), enf'g as mod. Matter of Link-Belt Company and Lodge 1604 of Amalgamated Association of Iron, Steel and Tin Workers of North America, etc., 12 N.L.R.B. 854.

tion with a campaign of intimidation and interference culminating in the expulsion of Federal members from its plant, it acquiesced in the activities of Lloyd, Sitton, Busby, and others, who notified Louis Robinson on November 18 that they had left their work in connection with the project of organizing a union and that they were planning to hold a meeting that night in furtherance of this project. Such acquiescence, under these circumstances, amounted to active encouragement, assistance, and support. The Boswell Company paid the organizers of the Association for their time spent away from the plant on November 18 and permitted them to use its office building for their first organizational meeting. These acts, in the light of the Boswell Company's openly manifested hostility toward the only other labor organization which had appeared upon the scene, not only constituted financial support, but also were clear indications to the employees that the organization thus being formed had the favor of the Boswell Company to the exclusion of all others, particularly the Federal. That the Boswell Company intended to create this impression and proposed to utilize the Association as a device for combating the Federal is clear from Louis Robinson's letter to J. G. Boswell written during the afternoon of November 18. In this letter Robinson first related the history of the Federal in scornful and disparaging terms, then stated that the formation of a "company" union seemed likely and that other employers in the locality were using such a device to control

labor "trouble." The letter indicates, also, that the Boswell Company's role in the organization of the Association was more than passive, in that Robinson had made "suggestions" to "some of the cooler heads" with respect to the procedure they should follow at their meeting that night.

The identity of the persons who were prominent in organizing the Association further supports our conclusion that the Association was formed with the assistance and encouragement of the Boswell Company and that the Boswell Company dominated the formation and administration of the organization. Rube Lloyd was an organizer and original officer of the Association; Tom, Joe, and Kelly Hammond, and Bill Robinson attended its organizational meetings and became charter members; Tom Hammond on at least two occasions secured the attendance of a subordinate at meetings of the Association. These individuals, as we have found, are responsible supervisory employees of the Boswell Company who participated prominently in its campaign of opposition to the Federal, threatening employees with loss of their jobs if they joined the Federal, and leading or sanctioning the anti-union demonstration of November 18. In view of the supervisory status of these employees and the role which they had theretofore played in the relations between the Boswell Company and the only labor organization which had attempted to organize its employees, their sponsorship of the Association inevitably demonstrated to

the rank and file employees that the Association was favored by the Company.

Busby, another of the three men who organized the Association and its original vice president, is the supervisor⁴⁵ in the machine shop at the Company's plant. His relationship with the Association, therefore, also demonstrated to the ordinary employees the Boswell Company's approval of the Association.

Other employees of the Boswell Company who were prominent in the formation of the Association, and who served with Lloyd and Busby on its first governing board, while not, strictly speaking, supervisory employees, hold positions with the Boswell Company of such a nature as to identify them clearly with the management of the Boswell Company rather than with its ordinary plant employees: Hubbard, the Association's first president, is a "farm advisor" employed by the Boswell Company, whose office is located in the same building with those of the Company officials, and who performs no function in connection with the operations of the plant. He instructs the foremen and contractors in charge of the Boswell Company's ranches in the vicinity how to conduct farming operations, and performs no manual labor at the Coreoran plant. McKeever, one of the original officers of the Association and its secretary at the time of the hearing, is employed by the Boswell Company as an agrono-

⁴⁵See Appendix.

mist, performing experimental work in connection with the raising of crops. Like Hubbard, he appears to have no duties connected with the operations of the plant and no familiarity with the problems of the plant employees. He is salaried and is carried on the Boswell Company's Los Angeles pay roll, whereas the ordinary employees in the plant are paid from the Corcoran office on an hourly basis. Brenes, the treasurer of the Association, is employed by the Boswell Company as cashier and head bookkeeper, with supervision over at least one assistant. Roberson, the Association's first secretary, is a clerical employee of the Boswell Company. Willoughby, a member of the first labor relations committee elected by the Association, is the Boswell Company's storekeeper at the Corcoran plant. Brenes, Roberson, and Willoughby are salaried employees of the Company.

The identification of men like Hubbard, McKeever, Brenes, Roberson, and Willoughby with the formation and administration of the Association indicates to us, as indeed it must of necessity have indicated to the ordinary production employees of the Boswell Company, that the Association was not an organization of the employees but rather one of the employer's device and choosing. From this and from the Boswell Company's sponsorship of the Association through its regular supervisory employees, we conclude that the Association was the creature of the Boswell Company.

It is consistent with this conclusion that the Association was established with 76 members within 10 days after the project to organize it was conceived, and that it failed thereafter to function effectively as a collective bargaining agency.

On the basis of all the evidence, we find as did the Trial Examiner, that the Boswell Company dominated and interfered with the formation and administration of the Association and contributed financial and other support to it and that the Boswell Company thereby interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

B. The Associated Farmers

On January 18, 1939, Prior inquired of Louis Robinson whether his attitude with respect to the reinstatement of the Federal members had changed in any respect. Robinson replied that his position was unaltered. The Federal, thereupon, on January 23, 1939, started picketing the Boswell Company plant.

On January 30, 1939, a mob visited the Boswell plant and drove the Federal pickets away. The amended complaint alleges that the Boswell Company and the Associated Farmers, acting as an employer in the interest of the Boswell Company, were responsible for this episode.

The Boswell Company has various membership and business connections with the Associated Farmers and its financial contributions to the support of that organization has been substantial. On Septem-

ber 20, 1938, it donated to the Associated Farmers \$235, a sum which amounted to 20 per cent of the organization's total receipts as of November 22, 1938. In March 1939 the Boswell Company remitted to the State organization, for credit to the 1939 assessment of \$635 levied by the State organization against the Associated Farmers, the sum of \$240.⁴⁶

The following officials and employees of the Boswell Company became members of the Associated Farmers prior to January 30, 1939: Louis Robinson, J. W. Hubbard, and H. G. McKeever; Albert Armour, an employee of the Boswell Company in charge of making farm loans through the Company's wholly owned lending subsidiary, The J. G. Boswell Farm Loan Company; and H. A. Curtis and Bert Lowry, foremen in charge of two of the Company's ranches. Brenes, Roberson, Bill Robinson, and Joe Hammond joined the Associated Farmers subsequent to January 30, 1939. Walter Grisham, a member of the Associated Farmers, operates a 1300-acre farm for the Boswell Company under a contract whereby the Boswell Company owns the crops and pays Grisham for his services.

Lloyd Liggett, a director of the Associated Farmers who described himself in his testimony as a small contractor and cook, has frequently been employed by the Boswell Company to do ploughing on a contract basis. J. B. Boyett, the president of the Asso-

⁴⁶This contribution included a small amount to be credited to the assessment against the Tulare County unit of the State organization.

ciated Farmers, is a member of a farming partnership which gins its cotton at the Boswell gin and has at times borrowed money from the Boswell Company's lending subsidiary. E. C. Salyer, a rancher member of the Associated Farmers, sells his cotton to the Boswell Company and has done some work for it as a contractor. At the time of the hearing, Salyer owed approximately \$188,000 to the Company's lending subsidiary. C. H. Glenn, president of the Exchange, who is a member of the Associated Farmers, also finances his farming operations through the Boswell Company. Other individual members of the Associated Farmers have had business and financial dealings with the Boswell Company at various times. On January 30, 1939, the date when the Associated Farmers is alleged to have attacked pickets stationed by the Federal at the Boswell plant, approximately 14 per cent of the Corcoran members of the organization were either employed by the Boswell Company or enjoyed close business relations with it.

On January 26, 1939, at a meeting of the board of directors of the Associated Farmers, President Boyett "reviewed" the situation caused by the picketing of the Boswell Company plant, stating that he understood that the products of the gin transported by truck had been declared "hot." Thereupon, two officers of the Tulare County unit of the Associated Farmers explained the method used by the "farmers" of Tulare County to transport their products to market "despite 'hot cargo' charges by

radical elements," through the facilities of an organization known as the Farmers Transportation Company. The board of directors of the Associated Farmers unanimously resolved to cooperate with the Farmers Transportation Company. However, following the meeting, the Associated Farmers apparently abandoned this project.

On January 30, 1939, Elgin Ely and Griffin were parked in a Federal picket car on the public highway near the entrance to the Boswell Company's plant. At about 9:30 in the morning between 150 and 200 men arrived at the scene in automobiles, the first one in the procession being driven by Lloyd Liggett, a director of the Associated Farmers. Liggett parked in front of the picket car and got out of his car. Men crowded around the picket car. Liggett opened the door of the picket car and said to Griffin, "What have you got here, Steve? You ought to be ashamed of yourself out here on this picket line, as good as the Company has been to you. They just can't stand this. We are not going to stand for it. Get out of the car." Griffin remarked that he was not violating the law, and Liggett retorted, "No, Steve, you are not violating the law. But we are not going to wait on the law." Voices in the crowd began to yell, "Turn the car over. Take them out. What are we waiting for?" and Liggett told the pickets that they had "better" leave and not return. Someone tore the picket sign off Ely's car and threw it in the back seat. Ely, the driver of the picket car, pretended that its starter would not

work and the crowd pushed the car to get it started. The pickets drove down the road, turned around, and came back through the crowd. Ely stopped and asked one Ralph Marshall, a member of the mob who was not then a member of the Associated Farmers, whether Marshall was satisfied that the pickets were leaving. Marshall replied in the affirmative, suggesting that the pickets keep going until they reached Mexico, and asked Ely where he was from. Ely asserted that he was a native Californian and Marshall expressed surprise, suggesting that Ely belonged in Oklahoma. The Federal pickets then proceeded to Martin's house, while the members of the mob drove up and down the streets of Corcoran blowing their automobile horns.

Subsequently, the Federal appealed to the Governor of California and to local peace authorities for protection of the pickets and early in February 1939 picketing was resumed. The record does not disclose how long it continued.

While there are conflicts in the testimony of the numerous witnesses who described these events at the hearing, the foregoing is substantially uncontroverted. The issue is whether the Boswell Company and/or the Associated Farmers were the actors in thus interfering with the pickets. There is some evidence adduced by the Board to the effect that Liggett and others in the crowd referred to it as a crowd of Associated Farmers members. On the other hand, of 34 persons identified by witnesses as having been present in the crowd, 7 denied their presence

and 15 were not members of the Associated Farmers on January 30, 1939. Of the 12 members of the Associated Farmers proved to have been present in the crowd, but one, Liggett, appears to have been a leader of the attack on the pickets. The only other person who appears to have been such a leader was one Robert Wilbur, who was not a member of the Associated Farmers. Those members of the crowd who testified at the hearing and were questioned as to whether their presence in the crowd was attributable to any invitation, suggestion, or authority from the Associated Farmers replied in the negative.

While we regard the events of January 30, 1939, with suspicion and are particularly suspicious of an incredible lack of memory as to the circumstances surrounding their presence in the crowd which dispersed the pickets, displayed by the members of the Associated Farmers who testified at the hearing, we cannot base thereon a finding that the Associated Farmers organized the mob that drove the pickets from the vicinity of the Boswell Company's plant or incited the mob to action. Nor is there evidence to show that the Boswell Company or any of its officers or employees participated in the disturbance or was responsible for the dispersal of the pickets. We shall dismiss the allegations of the amended complaint charging that the Boswell Company and the Associated Farmers molested the Federal pickets.

C. The Exchange

1. The discharge of Margaret A. Dunn.

Margaret A. Dunn, the head operator employed

by the Exchange, was discharged from her position on March 1, 1939. The amended complaint alleges that her discharge was effected and procured, for the purpose of discouraging membership in the Federal, by the three respondents, or, in the alternative, by the Associated Farmers and the Exchange acting in the interest of the Boswell Company, because she was suspected of engaging in union activities. The Trial Examiner found that the Exchange, alone, discriminatorily discharged Mrs. Dunn.

The president, manager, and principal stockholder of the Exchange is C. H. Glenn whose principal occupation is farming. Prior to 1938 Glenn devoted "some" of his time to superintending the operation of the Exchange, but delegated the actual management of the business to a bookkeeper, a lineman, and Mrs. Dunn. Mrs. Dunn, who had worked for the Exchange for 15 years and had been the head operator since 1926, when Glenn acquired the business, had almost sole responsibility for running the switchboard and supervising the other operators, of whom there were 4 or 5.

Glenn is a member of the Associated Farmers, and devotes a major portion of his time to the operation of a 5200-acre farm where he raises grain and cotton. He finances his farming operations through the Boswell Company, and during February and March 1939 was indebted to the Company for crop loans amounting to \$25,000 or \$30,000. The Boswell Company, also, is the Exchange's "largest" telephone subscriber.

On or about February 1, 1939, Mrs. Dunn's daughter Dorothy became acquainted with an attorney employed by the Board, who introduced her to Prior, the Federal organizer. During the following week, Dorothy saw Prior publicly in Corcoran several times, and on one occasion conversed with him while he was stationed with the pickets in front of the Boswell plant. On that occasion Dorothy and her sister Margaret were observed talking to Prior by Forrest Riley, a member of the Associated Farmers who had been active in the mob which dispersed the Federal pickets on January 30. Two or three days later Dorothy was told by one Secord, a Boswell Company employee, that she was "in the wrong" with the people of Corcoran, and particularly with William Boswell, because she had been seen at the picket line. On or about February 15, one Galusha, manager of the San Joaquin Ginning Company in Corcoran and a friend of Mrs. Dunn, told her that he had learned from Boyett, president of the Associated Farmers, that a petition was being circulated in the town to induce the Exchange to discharge Mrs. Dunn because of her daughters' having been seen with the pickets and because of a report that, through Mrs. Dunn, conversations overheard at the telephone office were being transmitted to the pickets.

On the following day Mrs. Dunn asked Glenn whether he had heard of the alleged petition for her discharge. Mrs. Dunn testified that Glenn admitted that he had been "approached by a group of men" who complained of "leakage" at the Exchange

switchboard and of the Dunn girls' supposed association with union men; and that Glenn reassured her, stating that her work for 15 years had been satisfactory, and that he was sure the charges against her were groundless. Mrs. Dunn further testified that she again discussed this subject with Glenn on or about February 18; that she then told him of additional rumors reported to her by Galusha, which had alarmed her; and that after discussing the situation generally, Glenn asked whether it was true that her daughters "were going out with any of the men." Glenn's testimony was that he had one such conversation with Mrs. Dunn, in about the middle of February; that Mrs. Dunn inquired about a petition to have her discharged, and that he told her that he had heard nothing about "any petition of that kind," that he could not in any event "take cognizance" of such a petition since the Exchange, as a public service corporation, must remain neutral with respect to labor disputes, and that "she needn't worry." Glenn did not specifically deny that he had told Mrs. Dunn of an "approach" from a group of men, or that he had the second conversation with Mrs. Dunn to which she testified. He admitted, at the hearing, that at the time of their interview in February he did not intend to discharge Mrs. Dunn.

On the morning of March 1 Glenn called Mrs. Dunn into his office at the Exchange and asked her to resign from her position. Concerning this interview, Mrs. Dunn testified as follows: Glenn told her

that the reason for his action was "that pressure was being brought to bear too heavily on him * * * that he just couldn't stand what was being said * * * they were certainly awful." Mrs. Dunn insisted upon a more definite explanation and asked Glenn whether these "awful" things reflected either upon her personal character or upon her work, to which Glenn replied, "Absolutely not." Finally, Glenn asked Mrs. Dunn whether it was not true that her daughter Margaret was "keeping company" with Prior. Glenn testified that in this conversation he told Mrs. Dunn that he wanted her to resign because Mrs. Woodruff, a fellow operator, had threatened to quit her job owing to disharmony with Mrs. Dunn; and because of Mrs. Dunn's "physical condition and the use of liquor that was so offensive" to other operators employed by the Exchange. Glenn denied in his testimony that he had referred in any way to "the labor trouble at the Boswell gin."

Mrs. Dunn refused to tender her resignation and returned to her work on the morning of March 1. During the afternoon of that day she went home. She then telephoned to Glenn and asked him whether he would permit her to return to work. Glenn told her that he would consider the matter and notify her of his decision. That night, Glenn testified, he determined to discharge Mrs. Dunn. On the following morning he called her on the telephone and told her not to come to work, remarking that she was "too

old for the work," that she was ill, and that "there had been complaints made about the service."⁴⁷

Meanwhile, at about 5 p.m. on March 1, John Ernest Dunn, Mrs. Dunn's husband, called upon Glenn at his office. Dunn testified to the following colloquy: Dunn asked what he had against the Dunn family. Glenn replied, "You know there has been trouble, labor trouble at the Boswell gin" explaining that this "labor trouble" was incidental to an attempt by a union to organize agricultural laborers in the vicinity. Dunn interrupted with an inquiry as to why Glenn had discharged his wife, and Glenn replied, "Wait a minute. This all ties in together." He told Dunn that his daughters had been seen talking to the pickets at the Boswell plant, that the persons who saw the girls there had become very angry, that people were saying that the Dunn girls were carrying messages to the pickets from their mother, that "they" were threatening to ruin Glenn's business unless he discharged Mrs. Dunn, and that he did not "know what to do about the whole thing." Dunn retorted that it was obvious that "they" could not hurt Glenn's telephone business, remarking that Glenn's farming connections might make him vul-

⁴⁷On cross-examination by the respondents' counsel Mrs. Dunn was asked repeatedly to fix the date of the conversation in which Glenn mentioned her alleged illness and complaints about her work. She testified that Glenn said these things to her "the second time," and fixed the date as March 1. She then denied, however, that on March 1, when she talked to Glenn in his office, Glenn had mentioned any complaints about the service, and repeated that

nerable to pressure, and the conversation ended. On the following morning, Dunn and Glenn had another conversation, concerning which Dunn testified as follows: Glenn stated that he wished to correct the impression which Dunn had evidently derived from their previous conversation as to his reasons for discharging Mrs. Dunn. He told Dunn that he had discharged Mrs. Dunn "for her own good," because of her age, her nervousness, and the condition of her health, remarking also that Mrs. Dunn had been "having trouble" with the other operators employed by the Exchange. Dunn inquired about the rumored petition for Mrs. Dunn's discharge and Glenn denied that there was any such petition, but stated that nine men in the community had called upon him and demanded that he discharge Mrs. Dunn. Glenn's testimony concerning his two conversations with Dunn corroborates Dunn's version in significant particulars. He admitted at the hearing that he had discussed with Dunn the labor dispute affecting the Boswell Company and that he had deplored as "unfortunate" the Dunn girls' visit to the picket line. Glenn denied that he had said that the labor trouble and Mrs. Dunn's discharge "tied in together,"

it was on "the second day" that Glenn mentioned this subject. We do not regard her obvious confusion, on cross-examination, respecting the date of this particular conversation as detracting from the weight of her original testimony that when Glenn first asked her to resign on March 1, he attributed his action to "pressure * * * being brought to bear * * * on him," and "awful" things that were being said.

claiming that he told him on March 1 that he had discharged Mrs. Dunn because of her physical condition, her alleged addiction to liquor, and because he was forced to decide whether to retain Mrs. Dunn or Mrs. Woodruff in his employ. He admitted, however, that he had told Dunn that a "friend," whom he identified at the hearing as Blakely Crary, cashier of the Corcoran bank, had informed him that a group of eight or nine men in the community were discussing a petition for Mrs. Dunn's discharge. Like Dunn, Glenn testified that Dunn closed the interview of March 1 with the insinuation, to which Glenn admittedly made no rejoinder at the time, that, as a farmer, rather than as the manager of a public service corporation, Glenn was succumbing to community pressure.

The Trial Examiner, who commented in his Intermediate Report upon Glenn's "almost apologetic" demeanor on the stand, gave full credence to the testimony of the Dunns in so far as their account of the foregoing conversations differed from Glenn's. The record fully justifies this conclusion as to the relative credibility of the witnesses in question. We find that Glenn made the various statements in February and on March 1 and 2 to which Mrs. Dunn and her husband testified.

The Exchange contends that Mrs. Dunn was discharged because of (1) her physical condition; (2) her alleged habit of drinking wine while at work; (3) alleged dissension which she created among the other employees of the Exchange; and (4) alleged

numerous complaints from subscribers about her work. We find that the evidence does not support these contentions.

Mrs. Dunn was 46 years old at the time of the hearing. In 1936 she had been ill, but she continued to work at the Exchange switchboard. During the year preceding her discharge, she had, from time to time, experienced pain while on duty. Glenn testified that during this period Mrs. Dunn displayed considerable nervousness, was obliged to brace herself with a pillow when sitting at the switchboard, and started to drink, occasionally doing so while on duty. Mrs. Dunn admitted at the hearing that several months prior thereto she had told Glenn that she drank four glasses of port wine daily for her health. She denied, however, that she ever drank while on duty.⁴⁸ Glenn did not testify that he had ever observed her drinking at the Exchange office, but claimed, merely, that he had smelled alcohol on her breath from time to time. However, there is no evidence that he ever admonished Mrs. Dunn on this account, or otherwise indicated that his observation that she had been drinking caused him concern. On the contrary, Glenn testified to only two conversations with Mrs. Dunn in which her alleged drinking habit was mentioned. He testified that on the first occasion, over a year prior to the hearing, Mrs. Dunn volunteered the information that she was drinking port wine on her

⁴⁸Except on one occasion when Glenn's wife gave Mrs. Dunn a drink 15 minutes before Mrs. Dunn went off duty.

physician's advice. Glenn admitted at the hearing that he did not comment when Mrs. Dunn told him this. Glenn testified that in a second conversation, in November 1938, he told Mrs. Dunn that the other operators were complaining of her drinking. Mrs. Dunn did not testify concerning these conversations. From all the evidence it is clear that Mrs. Dunn had not been in good health for a year or more prior to her discharge and that she drank wine for medicinal purposes. The evidence is insufficient, however, to justify the inference that Mrs. Dunn was physically unable to perform her work, that she had an offensive drinking habit, or that she was considered by Glenn to have such a habit.

As to the "dissension" among the telephone operators allegedly caused by Mrs. Dunn, Glenn testified that he had once found Mrs. Dunn and Lillian Fowler, another operator, in tears; that in November 1938 he had told Mrs. Dunn that Mrs. Woodruff, another operator, had threatened to resign because she "couldn't stand the dissension that was going on in the office"; that in January 1939 he had told Mrs. Dunn "that the girls were complaining" and that the "dissension" in the office must stop; and that on March 1, before he asked Mrs. Dunn for her resignation, Mrs. Woodruff had announced her intention to resign. There is no evidence to show that Mrs. Dunn was to blame for the alleged "dissension" among the employees of the Exchange, or that Glenn considered her responsible for this situation. Indeed, as Glenn himself testified, he admitted to John Dunn

during their conversation on March 1 that the probable cause of the trouble among the operators was that Glenn had failed to instruct them clearly as to who, among them, had supervisory authority over the others.

As to the alleged complaints from subscribers about unsatisfactory service rendered by Mrs. Dunn, Glenn testified that he had received such complaints in increasing volume during the 18 months preceding March 1, 1939. With respect to this, again, the evidence consists of little more than Glenn's general assertions. Glenn named eight persons from whom, he claimed, he had received complaints about Mrs. Dunn's service. One of these was Albert Armour, an official of the Boswell Company; another was Blakeley Crary, cashier of the local bank and a member of the Associated Farmers. The only specific complaint made by Armour, to which Glenn testified, was not concerning Mrs. Dunn's claimed incompetence as an operator but concerning her friendship with Galusha, the manager of the Boswell Company's local competitor in the cotton processing business. Glenn understood that the Boswell Company objected to Mrs. Dunn's association with Galusha because of the possibility of the business secrets being overheard at the Exchange office and communicated to a competitor. Glenn testified that he reported this complaint to Mrs. Dunn in January 1939. It was the only complaint from a subscriber which he claimed to have transmitted to Mrs. Dunn at any time. The only subscriber called by the Exchange

to testify with respect to Mrs. Dunn's alleged inefficiency was Crary, who testified that he knew Mrs. Dunn and recognized her voice over the telephone;⁴⁹ that he uses the telephone 20 or 30 times a day; that on 3 or 5 occasions during the 2 years preceding March 1, 1939, he had complained to Glenn about the service rendered by Mrs. Dunn at the switchboard; and that during January 1939 he had told Glenn that a group of people at a dinner party which he attended had discussed Mrs. Dunn's poor service at the Exchange office and talked of petitioning the Railroad Commission to have Mrs. Dunn discharged. On cross-examination, Crary, who had been a bank officer in the community for 9 years, was unable to remember the identity of any of the persons at this dinner party except his wife. Although both Glenn and Crary testified that this party, and Crary's report thereof to Glenn, occurred about the first of January 1939, Glenn did not inform Mrs. Dunn of the alleged complaints about her service reported by Crary when he talked to her during the last week in January about Armour's objection to her association with Galusha.

Although Glenn insisted, at the hearing, that he had received more complaints about Mrs. Dunn than about any other operator during the period since July 1938, he admitted that "generally speaking" he is accustomed to receive complaints from subscribers about all the operators and about the Ex-

⁴⁹He was unable to state, however, whether she was usually on duty during the day or during the night.

change's service generally. In view of certain mechanical defects in the equipment of the Exchange, its subscribers frequently receive unsatisfactory service which is not actually the fault of the operators. The Exchange uses a 13-year old switchboard which has no device to notify the operators automatically when a conversation terminates; consequently, it is necessary for the operators to listen to or interrupt conversations with inquiries in order to determine when to disconnect the wires. Moreover, the Exchange continually has trouble with crossed wires, due to wear in the aerial cables. On occasion this condition has not been located and remedied for as long as a month, and just prior to January 1, 1939, the Exchange had experienced unusual difficulty with crossed wires. Mrs. Dunn admitted at the hearing that during her long service with the Exchange she had had "words" with subscribers on numerous occasions, and alluded specifically to one occasion when she had requested Crary to "control his temper so she could give him good service." She denied that she had had any more trouble with subscribers' complaints than other operators and testified that Glenn had never spoken to her of service complaints prior to March 1939. Her testimony in this respect was corroborated by Glenn's.

There was no evidence whatsoever indicating the nature of Mrs. Dunn's alleged shortcomings as a switchboard operator. We find it difficult to believe that Glenn would have kept Mrs. Dunn in her responsible position as head operator for a period of

18 months, without any admonition or warning, if, in fact, she was so incompetent that the subscribers of the Exchange singled her out during this period for criticism and complaint. Finally, Glenn admitted to Mrs. Dunn, in February and again on March 1, that her work was satisfactory. In view of this evidence we do not believe that there was, in fact, any basis for criticism of Mrs. Dunn's work, or that Glenn considered her inefficient.

As the episode of January 30, 1939 demonstrates, a large number of the residents of Corcoran including persons who were connected with the Boswell Company and the Associated Farmers were hostile to the Federal and were particularly inflamed against the pickets, at a time immediately preceding Mrs. Dunn's discharge. Dorothy and Margaret Dunn had been seen with Prior and at the picket line shortly following the disturbance of January 30, and Dorothy and her mother thereupon received warnings of public resentment. Glenn's own admissions to the Dunns indicate his belief that certain persons in the community had, mistakenly or otherwise, linked Mrs. Dunn and her daughters with the Federal pickets, and his sympathy with the community's opposition to a union movement which, he believed, threatened his economic interests as a farmer. Although Glenn claimed, at the hearing, that all Mrs. Dunn's alleged shortcomings and the complaints about her work antedated her discharge by several months or longer, he admitted that his decision to discharge her was not formed until after the attack on the pickets and

the Dunn girls' visit to the picket line. On March 1 Glenn confessed to the Dunns that he was acting under pressure exerted by persons who resented the Dunn girls' association with union men and Mrs. Dunn's supposed assistance to the Federal.

In view of these facts, and the lack of convincing evidence to support the Exchange's asserted defenses, we find that in discharging Mrs. Dunn the Exchange acceded to the desires of a group of local citizens who sought Mrs. Dunn's discharge because of her alleged union sympathies and activity. By discharging Mrs. Dunn in response to this pressure, the Exchange discriminated with respect to her hire and tenure of employment, thereby discouraging membership in the Federal as well as in labor organizations generally. By this conduct the Exchange interfered with, restrained, and coerced its employees and the employees of the Boswell Company in the exercise of the rights guaranteed in Section 7 of the Act.

The evidence does not show that either the Boswell Company or the Associated Farmers, as distinguished from certain of their employees, members, and sympathizers in the community, was responsible for the pressure which induced Glenn to discharge Mrs. Dunn. We shall, therefore, dismiss the complaint in so far as it alleges that the Associated Farmers and the Company caused the discharge of Mrs. Dunn.

2. The refusal to reinstate Margaret A. Dunn.

The complaint alleges that the three respondents,

or, in the alternative, the Associated Farmers and the Exchange acting in the interest of the Boswell Company, refused to reinstate or permit the reinstatement of Mrs. Dunn to her position with the Exchange because she filed charges with the Board. The Trial Examiner sustained this allegation as to the Exchange.

On March 14, 1939, Mrs. Dunn filed a charge with the Board's Regional Office for the Twentieth Region (San Francisco, California) alleging that the Exchange, in discharging her, had engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act. On or about March 21 Mrs. Dunn asked Forrest Riley, a member of the Associated Farmers, whether he would appear as a witness for her at a Board hearing of her case. Riley anathematized the Board and told Mrs. Dunn that she "might as well have a revolution as to have the National Labor Relations Board come down here," that "they" would not tolerate the Board's "butting into their affairs" in Corcoran, and that, if the Board ordered the Exchange to reinstate Mrs. Dunn, he would "take out his phone" and influence other people to follow his example. Mrs. Dunn suggested to Riley that the persons who had induced Glenn to discharge her should induce him to reinstate her to her position.

On the same day Mrs. Dunn also mentioned the charge filed by her to Russel Slaybaugh, a member of the Associated Farmers, who informed her that it would cause an "upheaval" and hurt many people

in the town if she insisted upon a Board hearing. Mrs. Dunn told Slaybaugh that under the circumstances she would withdraw her charge. Subsequently Mrs. Dunn told Boyett, the president of the Associated Farmers, of her conversations with Riley and Slaybaugh and of her decision to withdraw her charge. Boyett told her that he would try to obtain her reinstatement. Later that day Mrs. Dunn telegraphed to the Regional Director for the Twentieth Region, "Do not send representative * * * Everything satisfactory." On April 4, 1939, Mrs. Dunn wrote a letter to the Regional Director for the Twentieth Region stating that her case had not been satisfactorily settled, inasmuch as she was not yet reinstated.

About a week later Galusha told Mrs. Dunn that he had learned from Boyett that some 40 or more persons in the community had threatened, if Mrs. Dunn prosecuted her case before the Board, to injure, through their business connections, any witnesses who might testify for Mrs. Dunn, as well as her husband, her daughter, and her two sons who were employed in Coreoran and its vicinity. On the following evening Boyett told Mrs. Dunn that the reports she had received from Galusha were true, that he personally regretted the situation, but that people were very indignant, and that "it was going to cause an awful lot of hurt, friend pitted against friend, and it would just cause an awful lot of discord in the town of Coreoran." Thereupon, with Boyett's assistance, Mrs. Dunn drafted the following

letter which was sent to the Twentieth Regional office:

I would like very much to have you drop my case against the Corcoran Telephone Exchange, as there are too many personal friends, as well as members of my family, involved. We feel sure a satisfactory settlement will be made in a short time. We feel you would help us more by dropping the case than continuing it. I will not be here for interviews with anyone.⁵⁰

On May 4, 1939, the Federal filed with the Board's Twenty-first Regional Office the fourth amended charge in this proceeding, joining the Exchange as a party respondent and alleging that the respondents had engaged in unfair labor practices with respect to Mrs. Dunn. At the hearing Mrs. Dunn and her husband and daughter testified under subpoena.

It is clear that Mrs. Dunn attempted to withdraw her charge, filed with the Board on March 14, 1939, because she was intimidated by certain members of the Associated Farmers. There is no evidence to show, however, that either the Associated Farmers or the Boswell Company was responsible for the above-described conduct of Riley, Slaybaugh, and Boyett. Nor does the evidence indicate that Glenn's failure to reinstate Mrs. Dunn was caused by her action in filing charges with the Board. We shall,

⁵⁰Following the hearing in the instant proceedings, on December 12, 1939, this charge was withdrawn with the consent of the Regional Director for the Twentieth Region.

he would normally have been working for the Boswell Company⁵³ and less any sums already paid to these employees by the Boswell Company for days of work subsequent to November 18, 1938, when they were not actually working at its plant.

The Boswell Company contends that Elgin Ely is not entitled to be reinstated to its employ because, as it claims, he stated at the hearing that he was unwilling to accept reinstatement. At the conclusion of his direct examination by counsel for the Board, Ely was asked whether he would accept employment with the Boswell Company if the Board should order his reinstatement. He replied, apparently with some hesitation, "Yes." Counsel for the respondents then interrogated him as to why his reply had been hesitant, and whether he wished to qualify his answer. Ely replied that he had not been satisfied with the conditions of his employment with the Boswell Company, and that had been his reason for joining the Federal. We do not interpret Ely's testimony as signifying an intention to refuse an offer of reinstatement.

The Boswell Company contends also that Farr obtained other regular and substantially equivalent employment subsequent to the termination of his employment by the Company, and that he is thus ineligible for reinstatement. Between November 18,

⁵³Thus, there shall not be deducted from the back-pay awards net earnings during the slack seasons when the employees in question would not normally have been working for the Boswell Company.

1938, the date of the discrimination against him, and May 22, 1939, when he testified at the hearing, Farr had worked at but a few odd jobs, earning about \$15. It appears that at the time of the hearing Farr was about to enter upon new employment which he had secured in another town. Farr testified, however, that he would be willing to accept reinstatement to his position with the Boswell Company. The fact that Farr's prospective employment was located in a town at some distance from his residence indicates that it was not substantially equivalent to his employment with the Boswell Company.⁵⁴ There was no other evidence bearing upon the character of his new position. We find that Farr has not since the discrimination against him by the Boswell Company obtained other regular and substantially equivalent employment.

Even were it true, as the Boswell Company con-

⁵⁴*Matter of Mooresville Cotton Mills and Local No. 1221, United Textile Workers of America*, 15 N.L.R.B. 416, enf'd as mod. *Mooresville Cotton Mills v. National Labor Relations Board*, 110 F. (2d) 179 (C.C.A. 4); *National Labor Relations Board v. Carlisle Lumber Company*, 99 F. (2d) 533 (C.C.A. 9) cert. den. 306 U. S. 646, enf'g *Matter of Carlisle Lumber Company and Lumber & Sawmill Workers' Union, Local 2511, Onalaska, Washington and Associated Employees of Onalaska, Inc., Intervenor*, 7 N.L.R.B. 332; *National Labor Relations Board v. Botany Worsted Mills, Inc.* 106 F. (2d) 263 (C.C.A. 3), enf'g as mod. and remanding [for further determination] *Matter of Botany Worsted Mills and Textile Workers Organizing Committee*, 4 N.L.R.B. 292.

tends, that Farr had obtained other regular and substantially equivalent employment we would nevertheless in the exercise of the authority granted by Section 10 (c) of the Act, order his reinstatement with back pay, since we find that such remedial order is necessary to assure effectively the right of self-organization to the Boswell Company's employees and thus effectuate the policies of the Act.⁵⁵

Subsequent to the termination of his employment by the Boswell Company, Powell had a finger amputated, as the result of an injury received in the Boswell Company's employ. He was given a permanent disability rating by the Industrial Accident Commission of California and received a lump sum compensation payment of approximately \$1143.45, computed on the basis of \$18.15 per week for 63 weeks. The respondents do not contend that Powell is disabled, by the loss of his finger, to perform the type of work which he formerly performed in the Boswell Company's employ. He is not, therefore, deprived by his disability of his right to reinstatement to his former or a substantially equivalent position. Nor can Powell's workmen's compensation award be regarded as "earnings" deductible from the sum

⁵⁵See *Phelps Dodge Corporation v. National Labor Relations Board* 61 S. Ct. 845, aff'g as mod. 113 F. (2d) 202 (C.C.A. 2), enf'g as mod. *Matter of Phelps Dodge Corporation*, a corporation and *International Union of Mine, Mill and Smelter Workers, Local No. 30*, 19 N.L.R.B. 547; *Matter of Ford Motor Company and International Union, United Automobile Workers of America, Local Union No. 249*, 31 N.L.R.B., No. 170.

payable to him by the Boswell Company to make him whole for that which he would have earned, but for its discrimination against him.⁵⁶

We have found that the Boswell Company did not discriminate with respect to the hire and tenure of employment of James Gilmore, Boyd Ely, Walter Winslow, W. R. Johnston, Stephen J. Griffin or Eugene Clark Ely. We shall, accordingly, dismiss the amended complaint in so far as it alleges such discrimination. However, the Boswell Company has interfered with, restrained, and coerced these employees in the exercise of the rights guaranteed in the Act and, in view of the Company's attitude toward the Federal and its members, there is grave danger that they may be refused reemployment even if their former or substantially equivalent positions are available. Each of the employees in question may have concluded, with reason, that so long as he adheres to the Federal, it will be fruitless for him to apply to the Boswell Company for work. Under the circumstances, the Boswell Company's unfair labor practices cannot be remedied without assuring to these six employees their normal expectancy of employment. For this reason, and in order to effectuate the policies of the Act, we shall order the Boswell Company to place their names upon a preferential list of its employees who are temporarily laid off, following a system of seniority to such extent

⁵⁶Cf. *Matter of Oil Well Manufacturing Corporation and Employees Mutual Benefit Association*, 14 N.L.R.B. 1114.

as has theretofore been applied in the conduct of its business and to offer employment to these employees in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.⁵⁷

The Boswell Company contends that Gilmore, Boyd, Ely, Winslow, Johnston, Griffin, and Eugene Clark Ely may not benefit by the exercise of the remedial power of the Board because they are not "employees" of the Boswell Company within the meaning of Section 2 (3) of the Act. This, it asserts, it the case because "a lay-off was considered as a termination of employment."⁵⁸ In addition, it contends that Gilmore, Boyd Ely, Griffin, and Johnston obtained other regular and substantially equivalent employment subsequent to the termination of their employment by the Boswell Company.

⁵⁷See Matter of American Numbering Machine Company and International Association of Machinists, District #15, 10 N.L.R.B. 536; Matter of Schwarze Electric Company and International Union, United Automobile Workers of America, Local No. 268, 16 N.L.R.B. 246; Matter of United Dredging Company and Inland Boatmen's Division, National Maritime Union, Gulf District, affiliated with the C.I.O., 30 N.L.R.B., No. 118.

⁵⁸The Boswell Company makes the same contention as to Elgin Ely and the employees evicted on November 18, 1938. Since, however, the work of these employees ceased because of the Boswell Company's unfair labor practices, they are clearly its "employees" within the meaning of Section 2 (3) of the Act.

Although Section 10 (c) of the Act provides expressly that the Board's remedial power to require such affirmative action as will effectuate the policies of the Act shall include the power to order reinstatement of "employees," it is clear that this section does not preclude the Board from requiring the reinstatement of workers who may have ceased to be "employees" as defined in Section 2 (3) of the Act.⁵⁹ Moreover, the Boswell Company's claim that the individuals in question ceased to be its "employees" upon being laid off is contrary to the evidence. All these six claimants have been repeatedly employed by the Boswell Company, over periods of time varying from 1 to 10 years, with intermittent lay-offs due principally to the seasonal character of the Company's operations. A majority of the Company's employees at the Corcoran plant work intermittently, and the employment records of a large number of them, introduced in evidence at the hearing, show that it is the Company's custom to rehire the same individuals repeatedly after laying them off. The Boswell Company makes no claim that it has finally discharged any of these six claimants or that any of them has proved unsatisfactory as an employee. We must assume, therefore, that in the absence of discrimination against them on ac-

⁵⁹*Phelps Dodge Corporation v. National Labor Relations Board*, 61 S. Ct. 845, *aff'g as mod.* 113 F. (2d) 202 (C.C.A. 2), *enf'g as mod.* *Matter of Phelps Dodge Corporation, a corporation and International Union of Mine, Mill & Smelter Workers, Local No. 30*, 19 N.L.R.B. 547.

count of their membership in the Federal, they enjoy, now as in the past, a reasonable expectancy of being reinstated by the Boswell Company whenever the volume of its operations increases to the point where work in which they have customarily been employed becomes available. These individuals, therefore, did not cease to be employees of the Boswell Company upon being laid off.⁶⁰

Nor does the evidence support the Boswell Company's claim that Gilmore, Boyd Ely, Griffin, and Johnston obtained other regular and substantially equivalent employment following their lay-offs. Gilmore and Boyd Ely were employed during the winter of 1938 in the construction of a high school building in Corcoran. Gilmore earned \$488.90 and Boyd Ely earned something over \$100. Griffin, who had

⁶⁰Cf. *Matter of Alaska Packers Association and Alaska Cannery Workers Local No. 5, Committee for Industrial Organization*, 7 N.L.R.B. 141; *National Labor Relations Board v. Waterman Steamship Corporation*, 309 U. S. 696, rev'g mod. of Board's order in 103 F. (2d) 157 (C.C.A. 5), enf'g as mod. *Matter of Waterman Steamship Corporation and National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama*, 7 N.L.R.B. 237; *Nashville, C. & St. L. Ry. v. Railway Employees' Department of American Federation of Labor et al.*, 93 F. (2d) 340, cert. den. 303 U. S. 649; *North Whittier Heights Citrus Assn. v. National Labor Relations Board*, 109 F. (2d) 76 (C. C.A. 9), cert. den. 310 U. S. 632, reh. den. 311 U. S. 724, enf'g *Matter of North Whittier Heights Citrus Association and Citrus Packing House Workers Union, Local No. 21091*, 10 N.L.R.B. 1269.

earned about \$65 or \$70 between November 1938 and the time of the hearing, testified, on June 1, 1939, that he was then employed in Hanford, California, as a hay baler, earning 25 cents per ton, or an average of from \$25 to \$30 per week. All three men testified that they would be willing to accept reinstatement to their positions with the Boswell Company. There is no indication that their other employment was in any sense regular or substantially equivalent to their employment with the Boswell Company. On the contrary, the character of Gilmore's, Ely's, and Griffin's employment indicates that these jobs merely served to supplement, during slack seasons or periods between seasons, the work available for them at the Boswell Company's Corcoran plant.⁶¹ Johnston, like Farr, whose prospective new employment is discussed above, was about to take a new job in another town at the time of the hearing. Johnston testified, however, that he would be willing to accept reinstatement to his position with the Boswell Company. As in the case of Farr, there is no evidence indicating that his prospective employment was regular or substantially equivalent to his employment with the Boswell Company. We find that neither

⁶¹Cf. Matter of Paragon Rubber Co.-American Character Doll Company and Toy and Novelty Workers Organizing Committee of the C.I.O., 6 N.L.R.B. 23; Matter of Dreamland Bedding and Upholstery Co., et al., and United Furniture Workers of America, C.I.O. #262, Furniture Workers Union #1541, A. F. of L.; 24 N.L.R.B., No. 21.

Gilmore, Boyd Ely, Johnston, nor Griffin has obtained other regular and substantially equivalent employment since his lay-off by the Boswell Company. Furthermore, as stated above with respect to Farr, even were it true that Gilmore, Boyd Ely, Griffin, and Johnston had obtained other regular and substantially equivalent employment we would nevertheless, in the exercise of the authority granted by Section 10 (c) of the Act, order their reinstatement as employment becomes available for them, since we find that such remedial order is necessary to assure effectively the right of self-organization to the Boswell Company's employees and thus effectuate the policies of the Act.⁶²

Having found that the Boswell Company has unlawfully failed to safeguard the members of the Federal in its employ from physical interruption of their work and threats of assault by its other employees, we will order the Company to afford all its employees reasonable protection in its plant at all times from physical interruption of their work and physical assaults and threats thereof directed at discouraging membership in, or activities on be-

⁶²See *Phelps Dodge Corporation v. National Labor Relations Board*, 61 S. Ct. 845, aff'g as mod. 113 F. (2d) 202 (C.C.A. 2), enf'g as mod. *Matter of Phelps Dodge Corporation*, a corporation and *International Union of Mine, Mill & Smelter Workers*, Local No. 30, 19 N.L.R.B. 547; *Matter of Ford Motor Company and International Union, United Automobile Workers of America*, Local Union No. 249, 31 N.L.R.B., No. 170.

half of, the Federal, or any other labor organization.⁶³

We have found that the Boswell Company dominated and interfered with the formation and administration of the Association and contributed financial and other support to it. Since the Association has never been recognized by the Boswell Company as the representative of its employees for the purposes of collective bargaining, it will not be necessary to order the disestablishment of the Association as such representative. However, we shall order the Boswell Company to refuse to recognize the Association as the representative of any of its employees for the purposes of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

We have found that the Exchange discriminated with respect to the hire and tenure of employment

⁶³National Labor Relations Board v. General Motors Corp., 116 F. (2d) 306 (C.C.A. 7) enf'g Matter of General Motors Corporation et al. and International Union, United Automobile Workers of America, Local No. 146, 14 N.L.R.B. 113; National Labor Relations Board v. Riverside Mfg. Co., 119 F. (2d) 302 (C.C.A. 5), enf'g as mod. Matter of Riverside Manufacturing Company and Amalgamated Clothing Workers of America, 20 N.L.R.B. 394; National Labor Relations Board v. Ford Motor Company, 119 F. (2d) 326 (C.C.A. 5), reh. den. May 31, 1941, enf'g as mod. Matter of Ford Motor Company and International Union, United Automobile Workers of America, affiliated with the A. F. of L., et al., 26 N.L.R.B., No. 34.

of Margaret A. Dunn and thereby discouraged membership in a labor organization and interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in the Act. We shall order the Exchange to offer Mrs. Dunn immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority and other rights and privileges. We shall further order the Exchange to make Mrs. Dunn whole for any loss of pay she has suffered by reason of its discrimination against her by payment to her of a sum of money equal to that which she normally would have earned as wages from March 2, 1939, the date of the discrimination against her, to the date of the offer of reinstatement less her net earnings⁶⁴ during said period.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L., and J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the Boswell Company and the Exchange have and each of them has en-

⁶⁴See footnote 52, *supra*.

gaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. By dominating and interfering with the formation and administration of J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, and by contributing financial and other support to said organization, the Boswell Company has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

4. By discriminating in regard to the hire and tenure of employment of their employees and thereby discouraging membership in Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L., the Boswell Company and the Exchange have and each of them has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

6. The Associated Farmers has not engaged in unfair labor practices, within the meaning of Section 8 (1), (3), or (4) of the Act.

7. Neither the Boswell Company nor the Exchange has engaged in unfair labor practices, within the meaning of Section 8 (4) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c)

of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

I. The respondent, J. G. Boswell Company, Corcoran, California, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, or with the formation or administration of any other labor organizations of its employees, and from contributing financial or other support to J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, or to any other labor organization of its employees;

(b) Discouraging membership in Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L., or any other labor organization of its employees, by evicting from its plant, discharging, laying off, and/or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment, or any term or condition of their employment;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Afford all its employees at all times reasonable protection in its plant in Corcoran, California, from physical interruption of their work and physical assaults or threats thereof directed at discouraging membership in or activities on behalf of Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L., or any other labor organization;

(b) Offer to L. A. Spear, R. K. Martin, H. N. Wingo, George J. Andrade, O. L. Farr, E. C. Powell, and Elgin Ely immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(c) Make whole said L. A. Spear, R. K. Martin, H. N. Wingo, George J. Andrade, O. L. Farr, E. C. Powell, and Elgin Ely for any loss of pay they have suffered by reason of said respondent's discrimination against them by payment to each of them, respectively, of a sum of money equal to that which he would normally have earned as wages from the date of such discrimination to the date of said respondent's offer of reinstatement, less his net earnings⁶⁵ during such portions of said period when he would normally have been working for said respondent; and less any sums already paid to him by said respondent for days of work subsequent

⁶⁵See footnote 52, *supra*.

to November 18, 1938, when he was not actually working at its plant;

(d) Place James Gilmore, Boyd Ely, Walter Winslow, W. R. Johnston, Stephen J. Griffin, and Eugene Clark Ely upon a preferential list of its employees who are temporarily laid off, following a system of seniority to such extent as has heretofore been applied in the conduct of said respondent's business, and offer employment to them in their former or substantially equivalent positions, as such employment becomes available and before hiring other persons for such work;

(e) Refuse to recognize J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, as the representative of any of its employees for the purpose of dealing with said respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment;

(f) Post immediately in conspicuous places in and about its plant at Corcoran, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that said respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs I, 1 (a), (b), and (c) of this Order; (2) that said respondent will take the affirmative action set forth in paragraphs I, 2 (a), (b), (c), (d), and (e) of this Order; and (3) that said respondent's employees are free to become or remain members of Cotton Products and

Grain Mill Workers Union Local No. 21798, A.F.L., and that said respondent will not discriminate against any employee because of membership or activity in that organization;

(g) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps said respondent has taken to comply herewith.

II. The respondent, Corcoran Telephone Exchange, Corcoran, California, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L., or any other labor organization by discharging or in any other manner discriminating in regard to the hire and tenure of employment of its employees or any of them;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Margaret A. Dunn immediate and

full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority and other rights and privileges;

(b) Make whole the said Margaret A. Dunn for any loss of pay she has suffered by reason of said respondent's discrimination against her by payment to her of a sum of money equal to that which she would normally have earned as wages during the period from March 2, 1939, to the date of said respondent's offer of reinstatement less her net earnings⁶⁶ during said period;

(c) Post immediately in and about its place of business at Corcoran, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that said respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs II, 1 (a) and (b) of this Order; (2) that said respondent will take the affirmative action set forth in paragraphs II, 2 (a) and (b) of this Order; and (3) that said respondent will not discriminate against any employee because of membership in or activity on behalf of Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L., or any other labor organization;

(d) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps said respondent has taken to comply herewith.

⁶⁶See footnote 52, *supra*.

III. The amended complaint be, and it hereby is, dismissed in so far as it alleges that:

1. The respondent, J. G. Boswell Company, engaged in unfair labor practices within the meaning of Section 8 (3) of the Act with respect to James Gilmore, Boyd Ely, Walter Winslow, W. R. Johnston, Stephen J. Griffin, Eugene Clark Ely, and Elmer Eller;

2. The respondent, J. G. Boswell Company, engaged in unfair labor practices with respect to Margaret A. Dunn;

3. The respondent, J. G. Boswell Company, drove certain pickets from the vicinity of its plant on January 30, 1939;

4. The respondent, J. G. Boswell Company black-listed members of Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L.;

5. The respondent, Corcoran Telephone Exchange, engaged in unfair labor practices within the meaning of Section 8 (4) of the Act;

6. The respondent, Associated Farmers of Kings County, Inc., Corcoran, California, engaged in unfair labor practices within the meaning of Section 8 (1), (3), and (4) of the Act.

Signed at Washington, D. C., this 29 day of September 1941.

HARRY A. MILLIS

Chairman

[Seal]

WM. M. LEISERSON

Member National Labor
Relations Board

Appendix A

Supervisory employees of the Boswell Company

The Boswell Company's plant in Corcoran is under the general management of Louis Robinson. His duties, however, do not include the ordinary day to day hiring and laying off of employees or the supervision of their work. Superintendence of labor matters at the plant is delegated to Gordon Hammond, who superintends manufacturing operations, hires and discharges the production employees, and maintains their employment records.

During the periods when its gins and mill are in operation the Company employs, at the Corcoran plant, between 80 and 180 or more production employees, depending upon the cotton crop. These employees perform various tasks in the three gin buildings, the oil mill, the "seed house," the warehouse, the machine shop, and the yard.

Louis Robinson, asked to "define a foreman so far as the operations at the plant are concerned," testified, "I would define a foreman as Gordon Hammond. He is in charge of everything out there. * * * I don't know of anybody at the plant that carries the title of foreman." Nevertheless, it is evident that there must be and are employees who assist Gordon Hammond in supervising the work of the 80 to 180 or more employees engaged in numerous tasks in physically separate locations in the plant. The testimony of Boswell employees at the hearing, referring to Tom and Joe Hammond, Bill Robinson, Lloyd, Busby, and others as "foreman" in-

dicates that Louis Robinson's testimony as to the use of this title may be inaccurate. Louis Robinson himself admitted, at the hearing, that the Company has "a large number of employees that direct work on certain jobs, as long as that particular job is running." The evidence respecting the particular individuals, detailed *infra*, shows that they are regularly engaged in supervising the work of other employees in the various departments in the plant and that their superior rank and responsibility is recognized both by the Company and by its ordinary employees.

Tom and Joe Hammond. Several witnesses, employed by the Boswell Company in ginning and milling operations, identified Tom and Joe Hammond as the supervisors in the gins and the mill, respectively. These employees had received their orders from Tom and Joe Hammond and several had been laid off by either Tom or Joe Hammond. During the November 17 conference in which Federal representatives complained to Gordon Hammond about the anti-union conduct of these individuals, Gordon Hammond admitted that he held them responsible for the execution of his instructions respecting operations in various departments of the plant. Tom and Joe Hammond are salaried employees, paid from the Boswell Company's Los Angeles Office. They clearly occupy the status of supervisors who would normally be designated as foremen or department superintendents. We find that they are supervisory employees of the Boswell Company.

Bill Robinson was described in the testimony of three ginnermen as a "trouble-shooter" and "foreman" or "subforeman" in the gins. Robinson repairs and adjusts the machinery in the gin building and instructs the ginnermen with respect to the technical performance of their work. In addition, he appears to have some general supervisory capacity. The uncontradicted testimony of several employees indicates that they had received their working orders from him when they were employed in the gins and that he had instructed them when they were to report for work and when to stop working. We find that Bill Robinson is a supervisory employee of the Boswell Company.⁶⁷

Rube Lloyd is the Boswell Company's "building superintendent," supervising the work of carpenters and construction employees. The uncontradicted testimony of two employees who had worked under Lloyd indicates that he gave working orders to them and others and instructed them when to report for work. Lloyd is customarily sent outside the plant in charge of gangs to do certain construction work. Although Gordon Hammond testified that on such occasions he selects the men comprising Lloyd's gang and accompanies them himself to lay out the work, he did not deny that Lloyd actually supervises the men performing construction work both inside and

⁶⁷Cf. *Matter of Universal Match Corporation and United Match Workers' Local Industrial Union #180*, affiliated with Committee for Industrial Organization, 23 N.L.R.B., No. 19, footnote 8.

outside the plant. Lloyd receives a salary of \$200 a month and is the highest paid "carpenter" employed at the Corcoran plant. We find that he is a supervisory employee of the Boswell Company.

Kelly Hammond was described in the testimony of Boyd Ely, an employee in the oil mill, as the supervisor in charge of the night shift in the mill. The Boswell Company introduced no evidence to contradict Ely's testimony. We find that Kelly Hammond is a supervisory employee of the Boswell Company.

Oscar Busby. Two witnesses employed by the Boswell Company referred to Busby, in their testimony, as the "foreman" in charge of the machine shop at the plant. Busby has from three to five subordinates in the machine shop and receives a salary from the Company's Los Angeles office. Louis Robinson, who described Busby as an expert mechanic and the highest paid employee in the machine shop, admitted, at the hearing, that "if anything came up" about the machine shop he, Robinson, would refer the matter to Gordon Hammond, who would discuss it with Busby, as the "best qualified man" in the shop. We find that Busby is a supervisory employee of the Boswell Company.

In the United States Circuit Court of Appeals
For the Ninth Circuit
No. 10148

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

J. G. BOSWELL COMPANY AND CORCORAN
TELEPHONE EXCHANGE,
Respondents.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondents, J. G. Boswell Company and Corcoran Telephone Exchange, their respective officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of J. G. Boswell Company, a corporation, Associated Farmers of Kings County, Inc., a corporation, and Corcoran Telephone Exchange, a corporation, and Cotton Products and Grain Mill Workers Union, Local No. 21798, A. F. of L., Case No. C-1476."

In support of this petition, the Board respectfully shows:

(1) Respondent, J. G. Boswell Company, is a California corporation engaged in business in the States of California and Arizona, within this judicial circuit, where the unfair labor practices occurred. Respondent, Corcoran Telephone Exchange, is a California corporation engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, an amended complaint, respondents' motions to dismiss, respondents' answers to amended complaint and amendment to amended complaint, hearing for the purpose of taking testimony and receiving other evidence, Intermediate Report, order transferring case to the Board, and respondents' exceptions to Intermediate Report, the Board, on September 29, 1941, duly stated its findings of fact, conclusions of law, and order directed to respondents, J. G. Boswell Company and Corcoran Telephone Exchange, their officers, agents, successors and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

I. The respondent, J. G. Boswell Company, Corcoran, California, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, or to any other labor organization of its employees;

(b) Discouraging membership in Cotton Products and Grain Mill Workers Union Local No. 21798, A. F. L., or any other labor organization of its employees, by evicting from its plant, discharging, laying off, and/or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment, or any term or condition of their employment;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and

to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

- (a) Afford all its employees at all times reasonable protection in its plant in Coreoran, California, from physical interruption of their work and physical assaults or threats thereof directed at discouraging membership in or activities on behalf of Cotton Products and Grain Mill Workers Union Local No. 21798, A. F. L., or any other labor organization;

- (b) Offer to L. A. Spear, R. K. Martin, H. N. Wingo, George J. Andrade, O. L. Farr, E. C. Powell, and Elgin Ely immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

- (c) Make whole said L. A. Spear, R. K. Martin, H. N. Wingo, George J. Andrade, O. L. Farr, E. C. Powell, and Elgin Ely for any loss of pay they have suffered by reason of said respondent's discrimination against them by payment to each of them, respectively, of a sum of money equal to that which he would normally have earned as wages from the date of such discrimination to the date of said respondent's offer of reinstatement, less his net earnings⁶⁵ during such portions of said period when he would normally have been working for said respon-

dent; and less any sums already paid to him by said respondent for days of work subsequent to November 18, 1938, when he was not actually working at its plant;

(d) Place James Gilmore, Boyd Ely, Walter Winslow, W. R. Johnston, Stephen J. Griffin, and Eugene Clark Ely upon a preferential list of its employees who are temporarily laid off, following a system of seniority to such extent as has heretofore been applied in the conduct of said respondent's business, and offer employment to them in their former or substantially equivalent positions, as such employment becomes available and before hiring other persons for such work;

(e) Refuse to recognize J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, as the representative of any of its employees for the purpose of dealing with said respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment;

(f) Post immediately in conspicuous places in and about its plant at Corcoran, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that said respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs I, 1 (a), (b), and (c) of this Order; (2) that said respondent will take the affirmative action set forth in paragraphs I, 2 (a), (b), (c), (d), and (e) of this Order; and

(3) that said respondent's employees are free to become or remain members of Cotton Products and Grain Mill Workers Union Local No. 21798, A. F. L., and that said respondent will not discriminate against any employee because of membership or activity in that organization;

(g) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps said respondent has taken to comply herewith.

II. The respondent, Corcoran Telephone Exchange, Corcoran, California, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Cotton Products and Grain Mill Workers Union Local No. 21798, A. F. L., or any other labor organization by discharging or in any other manner discriminating in regard to the hire and tenure of employment of its employees or any of them;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Margaret A. Dunn immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority and other rights and privileges;

(b) Make whole the said Margaret A. Dunn for any loss of pay she has suffered by reason of said respondent's discrimination against her by payment to her of a sum of money equal to that which she would normally have earned as wages during the period from March 2, 1939, to the date of said respondent's offer of reinstatement less her net earnings⁶⁶ during said period;

(c) Post immediately in and about its place of business at Coreoran, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that said respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs II, 1 (a) and (b) of this Order; (2) that said respondent will take the affirmative action set forth in paragraphs II, 2 (a) and (b) of this Order; and (3) that said respondent will not dis-

^{65, 66, 52} By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for the unlawful discrimination against him and the consequent necessity of his seeking employment elsewhere. * * * Monies received for work performed upon Federal, State, county, municipal or other work-relief projects shall be considered as earnings. * * *

criminate against any employee because of membership in or activity on behalf of Cotton Products and Grain Mill Workers Union Local No. 21798, A. F. L., or any other labor organization;

(d) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps said respondent has taken to comply herewith.

(3) On September 29, 1941, the Board's decision and order was served upon respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Sidney J. W. Sharp and M. Wingrove, respondents' attorneys in Hanford, California.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in the proceeding before the Board, including the pleadings, testimony, evidence, findings of fact, conclusions of law and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon, as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and re-

quiring respondents, and their agents, successors, and assigns, to comply therewith.

NATIONAL LABOR RELATIONS BOARD,

By ERNEST A. GROSS,

Associate General Counsel.

Dated at Washington, D. C., this 23rd day of May 1942.

District of Columbia, ss:

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

ERNEST A. GROSS,

Associate General Counsel.

Subscribed and sworn to before me this 23rd day of May 1942.

[Seal]

DANIEL T. GHENT, JR.,

Notary Public, District of
Columbia.

My Commission expires August 31, 1944.

[Endorsed]: Filed May 27, 1942, Paul P. O'Brien, Clerk.

ORDER TO SHOW CAUSE

CCA No. 10148

United States of America, ss:

The President of the United States of America
To J. G. Boswell Co., Corcoran, Cal., Cotton Products & Grain Mill Workers Union, Local No. 21798, A.F.L. 309 Broad Ave., Wilmington, Cal., J. G. Boswell Co. Employees Ass'n. of Corcoran & Tipton, Cal., Corcoran, Cal., Corcoran Telephone Exchange, Corcoran, Cal., Associated Farmers of Kings County, Inc. Box 386, Corcoran, Cal., Central Labor Council, Labor Temple, Los Angeles, Cal., Los Angeles Industrial Union Council, 406 South Main St., Los Angeles, Calif., Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 27th day of May, 1942, a petition of the National Labor Relations Board for enforcement of its order entered on September 29, 1941, in a proceeding known upon the records of the said Board as "In the Matter of J. G. Boswell Company, a corporation, Associated Farmers of Kings County, Inc., a corporation, and Corcoran Telephone Exchange, a corporation, and Cotton Products and Grain Mill Workers Union, Local No. 21798, A. F. of L., Case No. C-1476," and for entry of a decree by the United States Circuit Court

of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 28th day of May in the year of our Lord one thousand, nine hundred and forty-two.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California.—ss.

I hereby certify and return that I served the annexed Notice and copy of Petition on the therein-named Central Labor Council, Labor Temple, Los Angeles, Calif., by handing to and leaving a true and correct copy thereof with J. W. Buzzell, Secretary, Central Labor Council of Los Angeles, per-

sonally at Los Angeles in said District on the 2 day of June, 1942.

ROBERT E. CLARK

U. S. Marshal.

By EDWARD L. FAUPEL,
Deputy.

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California.—ss.

I hereby certify and return that I served the annexed Notice and Copy of Petition on the therein-named Los Angeles Industrial Union Council, by handing to and leaving a true and correct copy thereof with Phillip M. Connolly, Secretary personally at Los Angeles in said District on the 3 day of June, 1942.

ROBERT E. CLARK

U. S. Marshal.

By EDWARD L. FAUPEL,
Deputy.

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California.—ss.

I hereby certify and return that I served the annexed Notice and Copy of Petition on the therein-named Cotton Products & Grain Mill Workers

Union, Local No. 21798 A.F.L. by handing to and leaving a true and correct copy thereof with Marshal Shafer, Local Representative personally at Wilmington in said District on the 3 day of June, 1942.

ROBERT E. CLARK

U. S. Marshal.

By EDWARD L. FAUPEL,

Deputy.

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California.—ss.

I hereby certify and return that I served the annexed Petition To Enforce Order of National Labor Relations Board on the therein-named Corcoran Telephone Exchange Corcoran, California by handing to and leaving a true and correct copy thereof with Harry Glenn, Manager personally at Corcoran, California in said District on the 9th day of June, 1942.

ROBERT E. CLARK

U. S. Marshal.

By JOSEPH B. TRACY

Deputy.

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California.—ss.

I hereby certify and return that I served the annexed Petition To Enforce Order Of National Labor

Relations Board on the therein-named J. G. Boswell & Co., Corcoran, California by handing to and leaving a true and correct copy thereof with Louis T. Robinson, Director and Assistant Secretary personally at Corcoran, California in said District on the 9th day of June, 1942.

ROBERT E. CLARK

U. S. Marshal.

By JOSEPH B. TRACY

Deputy.

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California.—ss.

I hereby certify and return that I served the annexed Petition To Enforce Order Of National Labor Relations Board on the therein-named J. G. Boswell Co. Employees Association Of Corcoran and Tipton, California by handing to and leaving a true and correct copy thereof with Leo Melvern Carr, Secretary personally at Corcoran, California in said District on the 9th day of June, 1942.

ROBERT E. CLARK

U. S. Marshal.

By JOSEPH B. TRACY

Deputy.

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California.—ss.

I hereby certify and return that I served the annexed Petition To Enforce Order Of National Labor Relations Board on the therein-named Associated Farmers Of Kings County, Inc., Corcoran, California by handing to and leaving a true and correct copy thereof with Ronald Squire, President personally at Corcoran, California in said District on the 9th day of June, 1942.

ROBERT E. CLARK

U. S. Marshal.

By JOSEPH B. TRACY

Deputy.

[Endorsed]: Filed Jun. 16, 1942. Paul P. O'Brien,
Clerk.

[Title of Board and Cause.]

ANSWER OF J. G. BOSWELL COMPANY
EMPLOYEES ASSOCIATION OF CORCO-
RAN AND TIPTON, CALIFORNIA, TO PE-
TITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD.

Now come the members of the J. G. Boswell Com-
pany Employees Association, through their duly
elected and specially authorized President, W. D.

Robinson, and, filing this their answer to said petition, allege:

I.

That said J. G. Boswell Company Employees Association ever since the 28th day of November, 1938, has been and now is an employees association organized and existing under and by virtue of the National Labor Relations Act of the United States of America.

II.

That on the 27th day of May, 1942, at the time said order was filed herein, said association included among its regular members more than 90% of the total number of employees of said Company, but that since the issuance of said order on the 27th day of May, 1942, no additional men employed by the Company have been received into membership of said association; that the number of the members of said association is now 41.

III.

That more than a majority of all of the employees of said company are now members of said association and desire to continue said association as a bargaining agent under said Act.

IV.

That said association on June 9, 1942, was served with notice that on the 27th day of May, 1942, a petition of the National Labor Relations Board for en-

forcement of said order was filed herein and that said association was required to answer said petition within ten days after said service to avoid a default being taken against said association.

V.

That said association has never been made a party to said action and that said Board has no jurisdiction over said association, but that the enforcement of said order will in effect destroy said association for the reason that said order enjoins said company from negotiating with said association; that this is a round about and indirect method of assuming jurisdiction over said association, because if the company is not permitted to negotiate with the association, then the association cannot negotiate with said company, and the association will thereby be deprived of the rights afforded it as a bargaining agent under said Act.

VI.

That the Governing Board of said Association at a meeting thereof at Corcoran, California, on June 18, 1942, by the unanimous action of the members of said board, empowered, authorized and directed the undersigned, W. D. Robinson as the President of said Association, to do all acts and things required in connection with the preparation and filing of this answer.

Wherefore, said association prays that said order be modified so as to permit said association through its duly constituted officers to negotiate for wages,

hours and conditions of employment with said company.

J. G. BOSWELL COMPANY
EMPLOYEES ASSOCIATION
OF CORCORAN AND TIP-
TON, CALIFORNIA.

By W. D. ROBINSON

Its President

CLARK CLEMENT

Attorney for said Association

State of California,
County of Kings—ss.

W. D. Robinson, being first duly sworn, deposes and says:

That he is and at all times mentioned in the foregoing Answer was the President of J. G. Boswell Company Employees Association of Corcoran and Tipton, California; that he has read the *the* foregoing Answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein alleged on information or belief, and as to those matters that he believes it to be true.

W. D. ROBINSON

Subscribed and sworn to before me this 18th day of June, 1942.

[Seal]

CLARK CLEMENT

Notary Public in and for the
County of Kings, State of
California.

[Endorsed]: Filed Jun. 19, 1942.

[Title of Board and Cause.]

ANSWER TO PETITION FOR ENFORCEMENT FILED BY THE NATIONAL LABOR RELATIONS BOARD (NATIONAL LABOR RELATIONS BOARD CASE No. C-1476) AND MOTION TO VACATE AND SET ASIDE PURPORTED ORDER OF THE NATIONAL LABOR RELATIONS BOARD IN SAID CASE.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

J. G. Boswell Company and Corcoran Telephone Exchange, the respondents herein, and each of them, appearing by the undersigned, their legal counsel, say that a Petition for Enforcement of a purported Order of the National Labor Relations Board, hereinafter referred to as the Board, in case numbered 10148, has been filed with this Honorable Court and said respondents, and each of them, hereby answer said Petition, and set forth herein their respective Motions to vacate and set aside said purported Order of the Board appearing on the records of said Board as Case numbered C-1476.

Respondents, and each of them, by way of answer, admit, deny and allege as follows:

I.

Respondents, and each of them, deny that the Board has at any time lawfully issued any lawful Order against the Respondents, or either of them, and/or their respective officers, agents, successors and/or assigns.

II.

Respondents, and each of them, deny that any lawful proceedings resulting in any purported Order or Orders exists upon the records of the Board, or elsewhere, and allege that any proceeding conducted by the Board purporting to result in any Order or alleged Orders running against the respondents J. G. Boswell Company and Corcoran Telephone Exchange, or either of them, and/or their respective officers, agents, successors and/or assigns, and any such Order or Orders, are wholly illegal, null, void, and of no effect.

III.

Answering paragraph (1) of said petition, respondents admit that respondent J. G. Boswell Company is a California corporation engaged in business in the states of California and Arizona, within this judicial circuit, and that respondent Corcoran Telephone Exchange, is a California corporation engaged in business in the State of California, within this judicial circuit, but respondent Corcoran Telephone Exchange alleges that it is engaged solely in the telephone business and that its business is intra-state and not inter-state within the meaning of the Constitution of the United States of America, and/or the Act.

Further answering said paragraph of the petition, said respondents, and each of them, deny that any unfair labor practices occurred at any time in the operation of the business of either of said respondents.

Further answering paragraph (1) of said petition, said respondents, and each of them, deny that this court has jurisdiction of the petition or of this proceeding by virtue of Section 10 (c) of the National Labor Relations Act, hereinafter referred to as the Act, or otherwise, except to the extent necessary to inquire into the allegations hereinafter made, and to set aside and vacate any or all purported Orders of the Board; but in this reference respondents and each of them allege and say that they and each of them are not subject to the Act, and that the Board is without and never had jurisdiction to make the purported Order.

IV.

Answering paragraph (2) of said petition, respondents and each of them, deny that the Board duly stated its Findings of Fact and Conclusions of Law and duly issued the purported Order mentioned in said petition, in the sense that "duly", as used in the petition, means lawfully and according to due process of law, and as specifications and assignments under the foregoing denial, respondents, and each of them, allege and say that the following Findings, Conclusions, and purported Orders of the Board on the issues of its jurisdiction, including its Findings on said issues which are implied from its findings and conclusions that the exceptions of each of the respondents to the intermediate report of the trial examiner are without merit, and each of said findings is (a) contrary to fact, (b) contrary to law, (c) not supported by substantial evidence, (d) not

within the powers or jurisdiction of the Board, to wit:

1. The finding and conclusion that the exceptions of the respondents to the intermediate report are without merit, save as the exceptions are consistent with the Findings, Conclusions, and Order of the Board.

2. The finding and conclusion that telephone service, both local and long distance, is so indispensable to the conduct of ordinary business affairs that its interruption in a community like Corcoran would necessarily burden and obstruct commerce.

3. The finding and conclusion that the activities of the respondents, and each of them, set forth in the Decision and Order of the Board, occurring in connection with the operations of each of the respondents, have a close, intimate, and substantial relation to trade, traffic, commerce, and communication among the several states, and tend to lead to labor disputes burdening and obstructing commerce, and the free flow of commerce.

4. The finding and conclusion that the respondents, and each of them, have been guilty of unfair labor practices, and that such purported unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The finding and conclusion that the respondents and each of them is an employer within the meaning of Section 2 (2) of the Act.

6. The finding and conclusion that Margaret A. Dunn is an employee within the meaning of and as defined in the Act.

7. The finding and conclusion that proper charges were duly filed against the respondent Corcoran Telephone Exchange, and that such charges were duly served upon said respondent, or upon either of the respondents.

8. The finding and conclusion that the operations and activities of each of the respondents have a close, intimate, and substantial relation to trade, traffic, commerce and transportation among the several states and with foreign countries.

9. The finding and conclusion that the operations and activities of each of the respondents are anything more than operations and activities which are incidental only to commerce within the meaning and intent of Article I, Section 8 (3) of the Constitution of the United States.

10. The finding and conclusion that the operations and activities of the respondents, and each of them, affect commerce within the meaning and intent of the Act.

11. The finding and conclusion that the operations and activities of the respondents, and each of them, affect commerce within the meaning and intent of Article I, Section 8 (3) of the Constitution of the United States.

12. The finding and conclusion that the operations and activities of the respondents, and each of them, constitute commerce among the several states and with foreign countries within the meaning and intent of the Act.

13. The finding and conclusion that the opera-

tions and activities of the respondents, and each of them, constitute commerce among the several states and with foreign countries within the meaning of Article I, Section 8 (3) of the Constitution of the United States.

14. The finding and conclusion that respondents, and each of them, are engaged in commerce within the meaning and intent of the Act. And

15. The finding and conclusion that respondents, and each of them, are engaged in commerce within the meaning and intent of Article I, Section 8 (3) of the Constitution of the United States.

V.

Further answering paragraph (2) of said petition, respondents, and each of them, deny that the Board duly stated its Findings of Fact, Conclusion of Law, and issued the Order mentioned in said petition in the sense that the word "duly" as used in the petition means lawfully and according to due process of law, and as specifications and assignments under the foregoing denial, respondents, and each of them, allege and say that the following findings and conclusions of the Board on the issues of fact, including its findings and conclusions which are implied from its denial of all of respondents' exceptions to the intermediate report of the trial examiner, save as the exceptions are consistent with the findings, conclusions and purported Order of the Board, are, and each of said findings and conclusions is (a) not supported by substantial evi-

dence; (b) contrary to the evidence; (c) contrary to law, to wit:

1. The finding in the statement of the case recited in the purported Order and purported Decision that the charge upon which the complaint was issued by the Board was duly filed by Cotton Products and Grain Mill Workers Union, Local 21798, A. F. L.

2. The finding and conclusion that the objections interposed by respondents, and each of them, to the introduction of evidence by the Board purportedly in support of the allegations in the Fourth Amended Charge respecting the discharge of Margaret A. Dunn are without merit.

3. The finding and conclusion that the Trial Examiner did not commit error in his rulings upon motions and objections to the admission of evidence with respect to the allegations relating to Margaret A. Dunn.

4. The finding and conclusion that the respondents' Exceptions and Brief, save as the Exceptions are consistent with the findings, conclusions and order of the Board, are without merit.

5. The finding that the Pacific Telephone and Telegraph Company is a directly controlled subsidiary of American Telephone and Telegraph Company, and that American Telephone and Telegraph Company maintains world-wide communication facilities.

6. The finding that the charges for incoming and outgoing toll calls collected by respondent Corcoran

Telephone Exchange from its subscribers are prorated between the Exchange and the Pacific Telephone and Telegraph Company.

7. The finding that during the year beginning December 21, 1937 toll calls to points outside the State of California yielded an income to the respondent Corcoran Telephone Exchange of \$177.13.

8. The finding that at least three of the customers of respondent Corcoran Telephone Exchange are engaged in inter-state commerce.

9. The finding and conclusion that telephone service, both local and long distance, is so indispensable to the conduct of ordinary business affairs that its interruption in a community like Corcoran would necessarily burden and obstruct commerce.

10. The implied finding that there was an interruption in the telephone service of respondent Corcoran Telephone Exchange by reason of the discharge of Margaret A. Dunn.

11. The finding that the discharge of Margaret A. Dunn resulted in burdening and/or obstructing commerce.

12. The finding that respondent J. G. Boswell Company inaugurated a course of conduct tending to obstruct the formation and/or growth of the Federal.

13. The finding that respondent J. G. Boswell Company was hostile to the Federal, and that the purported hostility was initially expressed in the form of statements to employees at the plant disparaging the Federal and/or threatening employees with loss of their jobs if they adhered to it.

14. The finding that Tom Hammond made the purported statements, or any thereof, to Boyd Ely regarding the union which are attributed to him in the Board's purported Decision and Order.

15. The finding that Joe Hammond made the purported statements, or any thereof, to George Andrade regarding the union which are attributed to him in the Board's purported Decision and Order.

16. The finding that Joe Hammond made the purported statements, or any thereof, to O. L. Farr regarding the union which are attributed to him in the Board's purported Decision and Order.

17. The finding that Tom Hammond made the purported statements, or any thereof, to O. L. Farr regarding the union which are attributed to him in the Board's purported Decision and Order.

18. The finding that Joe Hammond made the purported statements, or any thereof, to H. N. Wingo regarding the union which are attributed to him in the Board's purported Decision and Order.

19. The finding that Tom Hammond made the purported statements, or any thereof, to R. K. Martin regarding the union which are attributed to him in the Board's purported Decision and Order.

20. The finding that Bill Robinson made the purported statements, or any thereof, to George Andrade regarding the union which are attributed to him in the Board's purported Decision and Order.

21. The finding that Bill Robinson made the pur-

ported statements, or any thereof, to Elgin Ely regarding the union which are attributed to him in the Board's purported Decision and Order.

22. The finding that Tom Hammond made the purported statements, or any thereof, to Stephen Griffin regarding the union which are attributed to him in the Board's purported Decision and Order.

23. The finding that Tom Hammond made the purported statements, or any thereof, to Walter Winslow regarding the union which are attributed to him in the Board's purported Decision and Order.

24. The finding that respondent J. G. Boswell Company does not deny the purported facts with respect to the alleged anti-union conduct of Tom Hammond, Joe Hammond and/or Bill Robinson.

25. The finding and conclusion that respondent J. G. Boswell Company's contention that it is not responsible for any alleged anti-union conduct of Tom Hammond, Joe Hammond and/or Bill Robinson is without merit.

26. The finding and conclusion that Tom Hammond, Joe Hammond and Bill Robinson are supervisors who direct the work of the rank and file employees in the plant; and the finding that the employees in the gins and mill are accustomed to receiving the respondent J. G. Boswell Company's orders from these individuals, and that the employees regard them as representing the Company in its relations with its employees.

27. The finding that the purported statements of Tom Hammond, Joe Hammond and Bill Robinson indicated that the respondent J. G. Boswell Company was actively opposed to the Federal and might punish its employees for engaging in union activities.

28. The finding that the purported statements of Tom Hammond and Joe Hammond and Bill Robinson and their purported conduct interfered with the employees in their self-organizational efforts.

29. The finding and conclusion that it is immaterial that Tom Hammond and Joe Hammond and Bill Robinson, and each of them, were not expressly authorized by respondent J. G. Boswell Company to intimidate and coerce the employees of the Company with respect to their union activities.

30. The finding that respondent J. G. Boswell Company failed to take any effective measures to stop Tom Hammond, Joe Hammond and Bill Robinson from their alleged interference with the union activities of its employees.

31. The finding that the employees of respondent J. G. Boswell Company believed that its attitude toward the Federal was that purportedly imputed to it by Tom Hammond, Joe Hammond and Bill Robinson, or any of them.

32. The finding and conclusion that respondent J. G. Boswell Company ratified the alleged illegal conduct of its alleged supervisory employees.

33. The finding and conclusion that respondent J. G. Boswell Company interfered with, restrained

and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

34. The finding that Tom Hammond made the purported statements, or any thereof, to L. A. Spear regarding the union which are attributed to him in the Board's purported Decision and Order.

35. The finding that on the morning of November 18, 1938, Bill Robinson and/or others sent the Federal members to the plant yard for "a little meeting" and/or anti-union demonstration.

36. The finding and conclusion that Kelly Hammond, Oscar Busby and Rube Lloyd are supervisors who direct the work of the rank and file employees in the plant; and the finding that the employees in the gins and mill are accustomed to receiving the respondent J. G. Boswell Company's orders from these individuals, and that the employees regard them as representing the Company in its relations with its employees.

37. The finding and conclusion that respondent J. G. Boswell Company is responsible for the purported conduct, actions and/or statements with respect to union matters of each of the following employees: Tom Hammond, Joe Hammond, Bill Robinson, Rube Lloyd, Kelly Hammond and Oscar Busby.

38. The finding that the Federal members were prevented from working after returning to their posts on the morning of November 18, 1938.

39. The finding that Spear, Farr, Martin, Andrade, Wingo, Briley and Powell were the only

active members of the Federal employed in the plant on November 18, 1938.

40. The finding that all employees, who were Federal members on November 18, 1938, other than Spear, Martin, Farr, Wingo, Briley, Andrade, Powell, Pete Galvan, Ygnacio Galvan and Andrew Galvan, had been laid off prior to said date.

41. The finding that Tom Hammond made the purported statements, or any thereof, to E. C. Powell regarding the union which are attributed to him in the Board's purported Decision and Order.

42. The finding that Bill Robinson made the purported statements, or any thereof, to E. C. Powell regarding the union which are attributed to him in the Board's purported Decision and Order.

43. The finding and conclusion that the testimony of E. C. Powell is worthy of credence.

44. The finding that respondent J. G. Boswell Company does not deny that the federal employees were evicted from its plant.

45. The finding and conclusion that the Federal members acted reasonably in leaving the premises on the morning of November 18, 1938, and then appealing to Louis Robinson.

46. The finding as to the conduct of the alleged supervisors of respondent J. G. Boswell Company on the morning of November 18, 1938.

47. The finding that the Federal members were confronted with a show of force, and that they were threatened that further interference with their work, if not actual assaults, would ensue if they failed to

comply with the alleged suggestion that they leave the plant.

48. The finding that the respondent J. G. Boswell Company encouraged an attitude of hostility to the Federal on the part of its non-union employees.

49. The finding that the non-union employees were not resentful of the Federal's action in requesting a reduction of working hours.

50. The finding and conclusion that the facts and evidence do not support the contention of respondent J. G. Boswell Company that its non-union employees without authority from the Company ousted the Federal employees because the non-union employees resented their presence and their organizational activities.

51. The finding that the respondent J. G. Boswell Company is responsible for the alleged anti-union conduct and activities of Bill Robinson and Kelly Hammond.

52. The finding that Bill Robinson and Kelly Hammond were the active leaders of the disturbance on November 18, 1938, and were the principal molesters of the Federal members.

53. The finding that respondent J. G. Boswell Company is responsible for the alleged acts and conduct of Rube Lloyd, or any thereof, on November 18, 1938.

54. The finding that the representatives of respondent J. G. Boswell Company initiated, lead and/or countenanced the entire alleged anti-union demonstration.

55. The finding that the "ordinary" employees in the plant insofar as they participated in the alleged demonstration acted on the assumption that "the Company was behind them."

56. The finding that Louis Robinson had an attitude of partisanship against the Federal and/or condoned the alleged acts of the individuals who had interrupted the operations of the plant and who purportedly evicted seven employees.

57. The finding that Louis Robinson made no "special investigation" to ascertain the origin of the alleged disturbance.

58. The finding that the only purely voluntary act of Louis Robinson with reference to the notice posted at the request of an agent of the Board was to amend the draft submitted by the Board's agent by substituting the words "proper representatives" for the words "supervisory employees."

59. The finding that Louis Robinson was lenient toward the persons who lead the alleged demonstration of November 18, 1938.

60. The finding and conclusion that the notice posted at the request of an agent of the Board cannot have impressed the employees as a sincere disavowal or condemnation by respondent J. G. Boswell Company of the alleged anti-union activities of its alleged plant supervisors.

61. The finding and conclusion that respondent J. G. Boswell Company is responsible for the alleged ouster of Spear, Martin, Farr, Wingo, Andrade, Briley and Powell from their employment on No-

vember 18, 1938 because of their membership and activities in the Federal.

62. The finding and conclusion that respondent J. G. Boswell Company discriminated with respect to the hire and tenure of employment of Spear, Martin, Farr, Wingo, Andrade, Briley and Powell.

63. The finding that respondent J. G. Boswell Company discouraged membership in the Federal.

64. The finding that respondent J. G. Boswell Company's representatives considered Powell as one of the Federal members who had allegedly been forced out of the plant.

65. The finding that Powell left the plant under Bill Robinson's alleged threat that he would incur physical violence if he did not remove his union button.

66. The finding and conclusion that there is no distinction between Powell's case and that of the others.

67. The finding that respondent J. G. Boswell Company condoned and/or adopted as its own the acts of its employees who had staged the alleged demonstration of November 18, 1938.

68. The finding and conclusion that the notification by respondent J. G. Boswell Company to Spear, Martin, Farr, Wingo, Andrade and Powell of the termination of their employment by registered letters constituted unfair labor practices.

69. The finding that respondent J. G. Boswell Company is in error in assuming that the employees who were allegedly evicted were obliged to take the initiative in seeking reinstatement.

70. The finding that respondent J. G. Boswell Company was responsible for the alleged anti-union demonstration of November 18, 1938.

71. The finding that respondent J. G. Boswell Company was under the affirmative duty to offer reinstatement to the employees who allegedly had been forced to leave their work.

72. The finding and conclusion that the employees who were allegedly evicted applied for reinstatement; and the finding and conclusion that respondent J. G. Boswell Company failed or refused to grant such reinstatement when applied for.

73. The finding that on November 19, 1938 and for at least a week thereafter there was work for all the employees who were allegedly ousted.

74. The finding that Prior, Martin and Spear denied in their testimony that Louis Robinson offered to permit the Federal members to return to work.

75. The finding and conclusion that the alleged evicted employees were justified in declining to return to work without a definite guaranty of protection.

76. The finding that Louis Robinson's claim that he offered to reinstate the alleged ousted employees is belied by the Company's entire course of conduct during the period of approximately two weeks subsequent to the interview of November 19, 1938.

77. The finding that on the afternoon of November 19, 1938, the Federal voted to boycott the respondent J. G. Boswell Company's products.

78. The finding that within the next few days after November 23, 1938 an agent of the Board persuaded Louis Robinson to post the notice to employees disclaiming any intention to violate the Act.

79. The finding and conclusion that the evidence does not support respondent J. G. Boswell Company's claim that Prior on behalf of the alleged ousted employees made a conditional application for reinstatement.

80. The finding that the respondent J. G. Boswell Company demonstrated to its employees in various ways its determination to exclude from its employ persons who adhered to the Federal.

81. The finding that Prior himself denied at the hearing that he had directed the alleged evicted Federal members not to accept reinstatement or apply therefor.

82. The finding that the facts as to the various alleged conversations subsequent to November 19, 1938, between Gordon Hammond and Spear, Powell and Farr are substantially as set forth in the testimony of Spear, Powell and Farr referred to in the Board's purported Decision and Order.

83. The finding and conclusion that the J. G. Boswell Company Employees' Association was dominated and/or interfered with by respondent J. G. Boswell Company.

84. The finding and conclusion that said Association was organized principally for the purpose of exterminating the Federal.

85. The finding and conclusion that Louis Robin-

son indicated in his letter of November 18, 1933, that it was his intention to let a committee of the Association determine under what conditions the alleged evicted Federal members should be permitted to return to work.

86. The finding and conclusion that it was inevitable that the recipients of the registered letters sent by respondent J. G. Boswell Company to Martin, Andrade, Powell, Spear, Farr and Wingo, should conclude that the letters signified final dismissal; and the finding and conclusion that such letters necessarily indicated that the "termination" of their employment was final.

87. The finding that in any event such letters afforded the recipients reasonable grounds to believe that further application to respondent J. G. Boswell Company for reinstatement would be fruitless.

88. The finding that respondent J. G. Boswell Company's conduct in sending the registered letters would have relieved the recipients of any obligation to thereafter apply for reinstatement.

89. The finding and conclusion that respondent J. G. Boswell Company refused, on November 19, 1938, to reinstate the Federal members.

90. The finding and conclusion that there was a duty on the part of respondent J. G. Boswell Company to reinstate the employees who were allegedly evicted.

91. The finding that after November 19, 1938, in dealing with Prior, respondent J. G. Boswell Company employed evasive and/or dilatory tactics.

92. The finding and conclusion that respondent J. G. Boswell Company manifested its determination to exclude the alleged ousted employees from positions at its plant so long as they adhered to the Federal.

93. The finding that the offers of reinstatement made to Spear and Powell shortly after the registered letters were dispatched were conditional offers.

94. The finding that respondent J. G. Boswell Company refused, following their alleged eviction, to reinstate Martin, Farr, Spear, Andrade, Wingo and/or Powell because of their membership in the Federal.

95. The finding that Tom Hammond made the purported statements, or any thereof, to Elgin Ely regarding the union which are attributed to him in the Board's purported Decision and Order.

96. The finding that Elgin Ely did not apply to respondent J. G. Boswell Company for reinstatement on or after December 2, 1938, because he had received from the company a registered letter dated November 28, 1938, regarding the termination of his employment at that time.

97. The finding and conclusion that respondent J. G. Boswell Company intended, by its letter of November 28, 1938, to Elgin Ely, to deter him from seeking reinstatement upon recovering from his injury; and the finding and conclusion that the letter had such effect.

98. The finding and conclusion that respondent

J. G. Boswell Company, by sending Elgin Ely its letter of November 28, 1938, deliberately conveyed to him the impression that as a member of the Federal his employment by the company was "terminated" finally.

99. The finding that on November 26, 1938, respondent J. G. Boswell Company discriminated with respect to the hire and/or tenure of employment of Elgin Ely.

100. The finding that Tom Hammond made the purported statements, or any thereof, to Eugene Clark Ely, regarding the employees' union, which are attributed to him in the Board's purported Decision and Order.

101. The finding that Joe Hammond was present at the meeting of employees on the evening of November 18, 1938.

102. The finding that the only persons identified at the hearing as one time members of the Federal, who were employed by respondent J. G. Boswell Company at any time subsequent to November 18, 1938, were employees who joined the Association.

103. The finding that respondent J. G. Boswell Company countered the Federal's initial efforts toward organization with a campaign of intimidation and interference culminating with the expulsion of the Federal members from its plant.

104. The finding and conclusion that the acquiescence of respondent J. G. Boswell Company in the activities of Lloyd, Sitton, Busby, and others, who notified Louis Robinson on November 18, that they

had left their work in connection with the project of organizing a union, amounted to active encouragement, assistance and/or support of the employees' Association.

105. The finding and conclusion that the acts of respondent J. G. Boswell Company with respect to the employees' Association constituted financial support to the Association.

106. The finding that the employees' Association had the favor of respondent J. G. Boswell Company to the exclusion of all other organizations, particularly the Federal.

107. The finding that respondent J. G. Boswell Company proposed to utilize the Association as a device for combatting the Federal.

108. The finding and conclusion that the Association was formed with the assistance and/or encouragement of respondent J. G. Boswell Company, and that said respondent dominated the formation and/or administration of the organization.

109. The finding and conclusion that Hubbard, McKeever, Brenes, Roberson and Willoughby held positions with respondent J. G. Boswell Company of such a nature as to identify them clearly with the management of the company rather than with its ordinary plant employees.

110. The finding and conclusion that the Association was not an organization of the employees of respondent J. G. Boswell Company, but rather one of the employer's device and choosing, and that the Association was the creature of respondent J. G. Boswell Company.

111. The finding and conclusion that respondent J. G. Boswell Company dominated and interfered with the formation and administration of the Association, and contributed financial and other support to it, and that said respondent thereby interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

112. The finding that Dorothy Dunn was introduced by an attorney employed by the Board to Prior on or about February 1, 1939.

113. The finding that on or about February 15, Galusha told Mrs. Dunn that he had learned from Boyett that a petition was being circulated in the town to induce the Exchange to discharge Mrs. Dunn because of her daughters' having been seen with the pickets and because of the report that, through Mrs. Dunn, conversations overheard at the telephone office were being transmitted to the pickets.

114. The finding that Mrs. Dunn's testimony was entitled to full weight and credibility.

115. The finding that the record fully justifies the Trial Examiner's conclusion as to the relative credibility of Mrs. Dunn, Mr. Dunn, and Mr. Glenn.

116. The finding that Glenn made the various statements in February and on March 1 and 2 to which Mrs. Dunn and her husband testified.

117. The finding and conclusion that the evidence does not support the contentions of respondent Corcoran Telephone Exchange that Mrs. Dunn

was discharged because of (1) her physical condition; (2) her alleged habit of drinking wine while at work; (3) alleged dissension which she created among the other employees of the Exchange; and (4) alleged numerous complaints from subscribers about her work.

118. The finding that there is no evidence that Glenn indicated that his observation that Mrs. Dunn had been drinking caused him concern.

119. The finding that the evidence is insufficient to justify the inference that Mrs. Dunn was physically unable to perform her work, that she had an offensive drinking habit, or that she was considered by Glenn to have such a habit.

120. The finding that there is no evidence to show that Mrs. Dunn was to blame for the alleged dissension among the employees of the respondent Corcoran Telephone Exchange, or that Glenn considered her responsible for this situation.

121. The finding that there was no evidence whatsoever indicating the nature of Mrs. Dunn's shortcomings as a switchboard operator.

122. The finding that there was in fact no basis for criticism of Mrs. Dunn's work or that Glenn considered her inefficient.

123. The finding that Glenn's own admissions to the Dunns indicate his belief that certain persons in the community had linked Mrs. Dunn and her daughters with the Federal pickets, and his sympathy with the community's opposition to a union movement which he believed threatened his economic interests as a farmer.

124. The finding that on March 1 Glenn confessed to the Dunns that he was acting under pressure exerted by persons who resented the Dunn girls' association with union men, and Mrs. Dunn's supposed assistance to the Federal.

125. The finding and conclusion that in discharging Mrs. Dunn, the respondent Corcoran Telephone Exchange acceded to the desires of a group of local citizens who sought her discharge because of her alleged union sympathies and activity.

126. The finding and conclusion that by discharging Mrs. Dunn, the respondent Corcoran Telephone Exchange discriminated with respect to her hire and tenure of employment, thereby discouraging membership in the Federal as well as in labor organizations generally.

127. The finding and conclusion that respondent Corcoran Telephone Exchange discouraged membership in the Federal as well as in labor organizations generally.

128. The finding and conclusion that the respondent Corcoran Telephone Exchange, by its alleged conduct, interfered with, restrained, and coerced its employees and/or the employees of respondent J. G. Boswell Company in the exercise of the rights guaranteed in Section 7 of the Act.

129. The implied finding that anything said by Tom Hammond, Joe Hammond, Bill Robinson, Kelly Hammond, Rube Lloyd, and Oscar Busby, or any of them, to the employees of respondent J. G. Boswell Company, was within the scope of their employment and was authorized by said respondent.

130. The finding that any acts of, or things done by, respondents, or either of them, found in the purported Decision, if true, have a close, intimate, or substantial relation to trade, traffic, commerce, and communication among the several states.

131. The finding that any acts of, or things done by, respondents, or either of them, found in the purported Decision, if true, tend to lead to labor disputes burdening and obstructing commerce, or burdening or obstructing commerce.

132. The finding that any acts of, or things done by, respondents, or either of them, found in the purported Decision, if true, tend to burden or obstruct commerce, or the free flow of commerce.

133. The finding that the respondents, or either of them, have engaged in unfair labor practices.

134. The finding that the respondents, or either of them, have discriminated with respect to the hire and tenure of employment of any of their employees.

135. The finding that the purported Order of the Board will effectuate the purposes of the Act.

136. The finding that the purported Order of the Board is appropriate to counteract the effects of the alleged unfair labor practices of each of the respondents.

137. The findings that Elgin Ely is willing to accept reinstatement with respondent J. G. Boswell Company.

138. The finding that O. L. Farr has not obtained other regular and substantially equivalent employment.

139. The finding that the purported order for the reinstatement of Farr with back pay is necessary to assure effectively the right of self organization to the respondent Boswell Company's employees, and to effectuate the policies of the Act.

140. The finding that Powell's workman's compensation award cannot be regarded as "earnings".

141. The finding that there is grave danger, or any danger, that James Gilmore, Boyd Ely, Walter Winslow, W. R. Johnston, Stephen J. Griffin, or Eugene Clark Ely, or any of them, may be refused reemployment, even if their former or substantially equivalent positions are available.

142. The finding that the alleged unfair labor practices of respondent J. G. Boswell Company cannot be remedied without assuring to James Gilmore, Boyd Ely, Walter Winslow, W. R. Johnston, Stephen J. Griffin, and/or Eugene Clark Ely, their normal expectancy of employment.

143. The finding that the purported Order of the Board that respondent J. G. Boswell Company place the names of said six men upon a preferential list of its employees who are temporarily laid off, and to offer employment to these men in their former or in substantially equivalent positions, as such employment becomes available, and before other persons are hired for such work, is necessary in order to effectuate the policies of the Act.

144. The finding that James Gilmore has not obtained other regular and substantially equivalent employment.

145. The finding that Boyd Ely has not obtained other regular and substantially equivalent employment.

146. The finding that Stephen J. Griffin has not obtained other regular and substantially equivalent employment.

147. The finding that W. R. Johnston has not obtained other regular and substantially equivalent employment.

148. The finding that Gilmore, Boyd Ely, Winslow, Johnston, Griffin, Eugene Clark Ely, and Elgin Ely are employees within the meaning of Section 2 (3) of the Act.

149. The finding that the purported Order of the Board for the reinstatement of Gilmore, Boyd Ely, Griffen, and Johnston as employment becomes available, is necessary to assure effectively the right of self-organization to respondent J. G. Boswell Company's employees and to effectuate the policies of the Act.

150. The finding that the purported Order of the Board that respondent J. G. Boswell Company afford all its employees reasonable protection in its plant at all times from physical interruption of their work and physical assaults and threats thereof, is necessary to effectuate the policies of the Act.

151. The finding that the purported Order of the Board that respondent J. G. Boswell Company refuse to recognize the Association as the representative of any of its employees for the purpose of dealing with it concerning grievances, labor dis-

putes, wages, rates of pay, hours of employment, or other conditions of employment, is necessary to effectuate the policies of the Act.

152. The conclusion that Cotton Products and Grain Mill Workers Union Local No. 21798, A. F. L., is a labor organization within the meaning of Section 2 (5) of the Act.

153. The conclusion that the respondents, and each of them, interfered with their employees in the exercise of rights guaranteed in Section 7 of the Act.

154. The conclusion that respondents, and each of them, restrained their employees in the exercise of rights guaranteed in Section 7 of the Act.

155. The conclusion that respondents, and each of them, coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

156. The conclusion that respondents have, and each of them has, engaged in and is engaging in unfair labor practices.

157. The conclusion that respondents have, and each of them has, engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

158. The conclusion that respondent J. G. Boswell Company dominated the formation and/or administration of J. G. Boswell Company Employees' Association.

159. The conclusion that respondent J. G. Boswell Company interfered with the formation and/or administration of J. G. Boswell Company Employees' Association.

160. The conclusion that respondent J. G. Boswell Company contributed financial and/or other support to J. G. Boswell Company Employees' Association.

161. The conclusion that respondent J. G. Boswell Company has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (2) of the Act.

162. The conclusion that the respondents, and each of them, have discriminated in regard to the hire and tenure of employment of their employees.

163. The conclusion that the respondents and each of them have discouraged membership in Cotton Products and Grain Mill Workers Union Local No. 21798, A. F. L.

164. The Conclusion that the respondents have, and each of them has, engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

165. The conclusion that the labor practices of respondents, or either of them, are unfair.

166. The conclusion that the labor practices of respondents, or either of them, affect commerce.

167. The conclusion that the labor practices of respondents, or either of them, affect commerce within the meaning of Section 2 (6) and (7) of the Act.

VI.

Further answering paragraph (2) of said petition respondents, and each of them, allege and say that the conclusions stated in the purported Deci-

sion and purported Order are not, and each of them is not, supported by the findings, except the conclusion that the Associated Farmers has not engaged in unfair labor practices within the meaning of Section 8 (1), (3), or (4) of the Act, and the conclusion that neither respondent J. G. Boswell Company nor respondent Corcoran Telephone Exchange has engaged in unfair labor practices, within the meaning of Section 8 (4) of the Act.

VII.

Further answering paragraph (2) of said petition respondent J. G. Boswell Company alleges and says that there is no basis in the evidence or in the findings for the purported Order that said respondent cease and desist from:

(a) Dominating or interfering with the administration of J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, or to any other labor organization of its employees;

(b) Discouraging membership in Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L., or any other labor organization of its employees, by evicting from its plant, discharging, laying off, and/or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment,

or any term or condition of their employment.

(c) In any other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

VIII.

Further answering paragraph (2) of said petition respondent J. G. Boswell Company alleges and says that there is no basis in the evidence or in the findings for the purported order that said respondent take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Afford all its employees at all times reasonable protection in its plant in Corcoran, California, from physical interruption of their work and physical assaults or threats thereof directed at discouraging membership in or activities on behalf of Cotton Products and Grain Mill Workers Union Local No. 21798, A. F. L., or any other labor organization;

(b) Offer to L. A. Spear, R. K. Martin, H. N. Wingo, George J. Andrade, O. L. Farr, E. C. Powell, and Elgin Ely immediate and full reinstatement to their former or substantially equivalent

positions, without prejudice to their seniority and other rights and privileges;

(c) Make whole said L. A. Spear, R. K. Martin H. N. Wingo, George J. Andrade, O. L. Farr, E. C. Powell, and Elgin Ely for any loss of pay they have suffered by reason of said respondent's discrimination against them by payment to each of them, respectively, of a sum of money equal to that which he would normally have earned as wages from the date of such discrimination to the date of said respondent's offer of reinstatement, less his net earnings during such portions of said period when he would normally have been working for said respondent; and less any sums already paid to him by said respondent for days of work subsequent to November 18, 1938, when he was not actually working at its plant;

(d) Place James Gilmore, Boyd Ely, Walter Winslow, W. R. Johnston, Stephen J. Griffin, and Eugene Clark Ely upon a preferential list of its employees who are temporarily laid off, following a system of seniority to such extent as has heretofore been applied in the conduct of said respondent's business, and offer employment to them in their former or substantially equivalent positions, as such employment becomes available and before hiring other persons for such work;

(e) Refuse to recognize J. G. Boswell Company Employees' Association of Corcoran and Tipton, California, as the representative of any of its employees for the purpose of dealing with said

respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment;

(f) Post immediately in conspicuous places in and about its plant at Corcoran, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that said respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs I, 1 (a), (b), and (c) of this Order; (2) that said respondent will take the affirmative action set forth in Paragraphs I, 2 (a), (b), (c), (d), and (e) of this Order; and (3) that said respondent's employees are free to become or remain members of Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L., and that said respondent will not discriminate against any employee because of membership or activity in that organization;

(g) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps said respondent has taken to comply therewith.

IX.

Further answering paragraph (2) of said petition respondent Corcoran Telephone Exchange alleges and says that there is no basis in the evidence or in the findings for the purported Order that said respondent cease and desist from:

(a) Discouraging membership in Cotton Prod-

ucts and Grain Mill Workers Union Local No. 21798, A.F.L., or any other labor organization by discharging or in any other manner discriminating in regard to the hire and tenure of employment of its employees or any of them;

(b) In any other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

X.

Further answering paragraph (2) of said petition respondent Corcoran Telephone Exchange alleges and says that there is no basis in the evidence or in the findings for the purported Order that said respondent take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Margaret A. Dunn immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority and other rights and privileges;

(b) Make whole the said Margaret A. Dunn for any loss of pay she has suffered by reason of said respondent's discrimination against her by payment to her of a sum of money equal to that which she would normally have earned as wages during the

period from March 2, 1939, to the date of said respondent's offer of reinstatement less her net earnings during said period.

(c) Post immediately in and about its place of business at Corcoran, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that said respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs II, 1 (a) and (b) of this Order; (2) that said respondent will take the affirmative action set forth in paragraphs II, 2 (a) and (b) of this Order; and (3) that said respondent will not discriminate against any employee because of membership in or activity on behalf of Cotton Products and Grain Mill Workers Union Local No. 21798, A.F.L., or any other labor organization;

(d) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps said respondent has taken to comply herewith.

XI.

Further answering paragraph (2) of said petition respondents, and each of them, allege and say that each and every purported Order of the Board set forth and referred to in the petition is contrary to law.

XII.

Further answering paragraph (2) of said petition respondents, and each of them, allege and say that each and every purported Order of the Board

set forth and referred to in the petition is without support of substantial evidence and is contrary to the evidence.

FURTHER AND AFFIRMATIVE DEFENSES AND GROUNDS OF MOTION TO VACATE PURPORTED ORDER

By way of further answer to the petition and as their several and separate further defenses thereto and grounds upon which they move to vacate the purported Order set forth and referred to in the petition respondents, and each of them, allege and say as follows, to wit:

I.

Upon its original appearance in the proceeding before the Board respondent J. G. Boswell Company filed its objections to the jurisdiction of the Board and its motion for a dismissal of the proceedings as to said respondent and to dismiss the charges on file against said respondent on the following grounds, to wit:

That no act of said respondent or to which said respondent is a party is in commerce, or affects commerce, or burdens or obstructs commerce, or the free flow of commerce, or has lead or tended to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce; and upon the further ground that the National Labor Relations Board had no jurisdiction over said respondent.

II.

Upon its original appearance in the proceedings before the Board respondent Corcoran Telephone Exchange filed its objections to the jurisdiction of the Board and its motion for a dismissal of the proceedings as to said respondent and to dismiss the charges on file against said respondent on the following grounds, to wit:

That no act of said respondent or to which said respondent is a party is in commerce, or affects commerce, or burdens or obstructs commerce or the free flow of commerce, or has lead or tended to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and upon the further ground that the National Labor Relations Board had no jurisdiction over said respondent.

III.

Upon the opening of the hearing before the Trial Examiner each of said respondents stated its said objections to the jurisdiction of the Board, and moved that the proceedings be dismissed as to each of said respondents on said grounds. The Trial Examiner denied each of said motions. At the conclusion of the testimony offered by the Board respondent Corcoran Telephone Exchange renewed its said objections and motion on all of the grounds stated in its written motion to dismiss, and upon the further ground that Mrs. Dunn herself testified that she was not a member of any labor organization and had never engaged in any union activities, and that any

redress so far as she is concerned is beyond the scope of the Act. This motion was likewise denied by the Trial Examiner. At conclusion of the hearing before the Trial Examiner respondent Corcoran Telephone Exchange renewed its said objections and motions by moving to strike all of the testimony adduced on behalf of the Board purportedly in support of the complaint against said respondent upon the ground that the Board had no jurisdiction over said respondent or its business in that it had not been shown that said respondent is engaged in inter-state commerce, nor that the conduct of its business in any manner affected inter-state commerce; and upon the further ground that there had been no showing in the case that Mrs. Dunn is a person who ever joined a labor organization, or assisted one, or in any manner attempted to assist one, and that, therefore, she is not a person to whom the rights referred to in Section 7 and Section 8 (1) of the Act are secured. This motion was taken under advisement, and the Trial Examiner in the Intermediate Report denied said motion. The Board in its purported Decision and purported Order affirmed the overruling by the Trial Examiner of the objections made by said respondents and the denial of said motions. The overruling of said objections and the denial of said motions were (a) contrary to law, and (b) error in law.

IV.

After the Trial Examiner signed the Intermediate Report herein respondents filed with the Board their exceptions to the Intermediate Report of the

Trial Examiner. In said exceptions respondents stated substantially all of their objections to the jurisdiction of the Board, and all of their defenses heretofore set forth in this answer and motion. Said exceptions to the Intermediate Report of the Trial Examiner are by reference incorporated in and expressly made a part of this answer and motion, and respondents, and each of them, rely thereon for further statement of their defenses to the petition of the Board for an Order of Enforcement, and the grounds upon which they, and each of them, move to vacate the purported Order of the Board set forth and referred to in the petition.

By way of further answer and as special defenses to said Petition for Enforcement respondents, and each of them, allege as follows:

I.

The Board is guilty of non-feasance and neglect of duty in that whereas it issued its purported Order on September 29, 1941, it thereafter refused, failed and neglected to act to enforce said purported Order until May 27, 1942 when it filed its petition in this Court, a period of approximately eight (8) months. Said purported order commands respondent J. G. Boswell Company to offer certain alleged employees immediate and full reinstatement to their former or substantially equivalent positions and to make whole said alleged employees for any loss of pay they may have suffered from the times of the termination of their employment by payment to each of them respectively of a sum of money equal to that

which he would normally have earned as wages from the date of termination of his employment to the date of said respondents offer of reinstatement, less his net earnings during such portions of said period when he would normally have been working for said respondent. Said purported Order commands respondent Corcoran Telephone Exchange to offer Margaret A. Dunn immediate and full reinstatement to her former or substantially equivalent position, and to make her whole for any loss of pay she may have suffered from the time of the termination of her employment by respondent. That because of said non-feasance and neglect of duty by the Board each of said respondents is deprived of due process of law in that (1) said purported Order of the Board was made at a time so remote from the present that it is impossible to ascertain from the record the present status of any of the alleged employees of the respondent for whose benefit said purported Order runs; (2) it is impossible to ascertain from the record or otherwise what any of the alleged employees of respondent J. G. Boswell Company would normally have earned as wages from said respondent subsequent to the date of termination of his employment; (3) it is impossible to ascertain from the record what, if any, other employment said alleged employees of each of the respondents have received from or after the time of the close of the hearing before the Trial Examiner in said case; (4) it is impossible to ascertain whether or not any of said alleged employees have received employment substan-

tially equivalent to that held by them with the respective respondents before the termination of their employment; (5) it is impossible to determine from the record what efforts, if any, said alleged employees, or any of them, have made to secure other and substantially equivalent employment to that held by them with the respective respondents at any time since the termination of their employment with the respective respondents.

II.

The Board is guilty of non-feasance and neglect of duty in that it has failed to take evidence on the question of whether or not any of said alleged employees of either respondent made any reasonable effort to obtain other or substantially equivalent employment after the termination of their employment by the respective respondents. The failure of the Board to consider evidence on said question, and its failure to make findings based on such evidence voided the said purported Order of the Board, and because of such neglect of duty and non-feasance on the part of the Board said purported Order is null, void and of no effect.

III.

This proceeding was not prosecuted fairly, impartially and in good faith, and the Intermediate Report of the Trial Examiner and the purported Order and purported Decision of the Board is contrary to law and void by reason of misconduct and misfeasance of the Trial Examiner in the following particulars, to wit:

1. The Trial Examiner throughout the hearing showed marked bias and prejudice in favor of the Federal and Board's counsel and case and against respondents and their counsel and case.

2. Throughout the entire hearing the Trial Examiner displayed an animosity toward counsel for respondents, and frequently and repeatedly during the course of the hearing became angry with and argued with respondents' counsel, and several times threatened to bar such counsel from further participation in the hearing, all without any reason, cause or justification whatsoever for such conduct or acts on the part of the Trial Examiner.

3. The Trial Examiner showed a hostile attitude toward witnesses called by respondents, and a friendly attitude toward witnesses called by the Board. In numerous instances he cross-examined and argued with witnesses called by respondents. He rarely examined the witnesses called by the Board, and when he did his examination was in the nature of a friendly and leading examination.

4. The Trial Examiner repeatedly during the hearing made statements off the record, which properly belonged therein. In several instances such statements were made over the objection of respondents. During the numerous off the record discussions which took place at the order of the Trial Examiner, he made statements which clearly revealed his bias and his animosity toward respondents and severely criticized counsel for respondents without any cause therefor. In at least one instance his ruling upon an

objection was made during one of these off the record discussions, and such ruling does not appear in the transcript. During some of these off the record discussions the Trial Examiner became angry with counsel for respondents, and the true nature of the proceedings and the actual attitude of the Trial Examiner is not correctly shown by the record.

5. That the Trial Examiner in his rulings upon motions and objections to admissibility of evidence improperly and unfairly favored Board's counsel and case and consistently ruled improperly and unfairly against the respondents and their respective counsel and cases.

6. E. F. Prior, business representative of the Federal, was present throughout practically the entire hearing, and although he was not an attorney in the proceeding, he was permitted by the Trial Examiner to sit, and did sit, at the table of Board's counsel, and from his actions and conduct it was apparent that he was aiding and assisting Board's counsel in the presentation of the Board's case against respondents. Upon numerous occasions during the hearing the Trial Examiner requested all counsel to come to his bench so he could discuss certain matters with them off the record, and on such occasions that E. F. Prior, although he was a witness for the Board and was not counsel for any of the parties to the proceeding, always went forward and was permitted by the Trial Examiner to participate in such discussions at the bench.

IV.

7. The Board is guilty of non-feasance and neglect of duty in that although the original charge against respondent J. G. Boswell Company in this proceeding was filed on November 21, 1938, and the fourth amended charge (which was against respondent Corcoran Telephone Exchange as *well respondent* J. G. Boswell Company) was filed May 4, 1939, the Board did not issue its purported Decision and purported Order until September 29, 1941; and did not thereafter act to enforce said purported Order until May 27, 1942, on which last mentioned date it filed with this court the petition for enforcement of its purported Order. The record shows that the original charge setting forth the alleged unfair labor practices of respondent J. G. Boswell Company was filed November 21, 1938, but said charge was never served on said respondent; that an amended charge against said respondent was filed on January 7, 1939, but was never served on said respondent; that a second amended charge against said respondent was filed February 6, 1939, but was never served; that a third amended charge against said respondent and Associated Farmers of Kings County, Inc., was filed March 4, 1939; and that on said date, to wit, March 4, 1939, the original complaint was issued and an order was made setting the case for hearing on March 13, 1939; that after the case had been set for hearing the matter was indefinitely continued by order of the Acting Regional Director, Twenty-first Region, dated March 6, 1939, without any reasons

given therefor; that thereafter the case was not set for hearing until May 6, 1939, on which date an amended complaint was issued against respondent Corcoran Telephone Exchange as well as respondent J. G. Boswell Company, and an order was made setting the case for hearing on May 18, 1939; that the transcript was written up daily, and although, upon conclusion of the hearing on June 16, 1939, the reporter's official transcript had been completely written up, the Trial Examiner delayed rendering and issuing his Intermediate Report until January 11, 1940, and said report was not served upon said respondents J. G. Boswell Company and Corcoran Telephone Exchange until January 25, 1940; that thereafter, on or about March 15, 1940, said respondents duly served and filed their exceptions to the Intermediate Report; that thereafter, on March 20, 1940, said respondents filed a brief, pursuant to leave granted by the Board, and said respondents waived oral argument by not requesting permission to argue the matter orally before the Board; that although the case in its entirety was submitted to, and was before the Board for decision, on March 20, 1940, the Board thereafter failed and neglected to determine the case and issue its purported final Decision and purported final Order until September 29, 1941.

The effect of this undue delay on the part of the Board, its agents and employees, will be extremely prejudicial to each of the respondents J. G. Boswell Company and Corcoran Telephone Exchange, in

event the court should grant the petition of the Board to enforce its purported Order.

Wherefore, said respondents J. G. Boswell Company and Corcoran Telephone Exchange, and each of them, move and pray:

1. That the petition of the Board for the order of enforcement be denied;
2. That the findings, conclusions, and purported Order of the Board be vacated and set aside;
3. That the complaint and the proceedings in said case be dismissed; and
4. That the respondents, and each of them, have such other and further relief, temporary and permanent, as shall be meet and in accordance with law.

J. G. BOSWELL COMPANY,
Respondent,

By LOUIS T. ROBINSON
Assistant Secretary

CORCORAN TELEPHONE
EXCHANGE,
Respondent

By C. H. GLENN
President

SIDNEY J. W. SHARP
M. WINGROVE
Attorneys for said
Respondents

State of California,
County of Kings—ss.

Louis T. Robinson, being duly sworn, deposes and says:

That he is an officer, to-wit, Assistant Secretary of J. G. Boswell Company, a corporation, one of the respondents in the above entitled action and that he makes this Affidavit for and on behalf of said corporation as respondent, that he has read the foregoing Answer and Motion and knows the contents thereof; that the same is true, except as to the matters which are therein stated on information or belief, and as to those matters he believes it to be true.

LOUIS T. ROBINSON

Subscribed and sworn to before me this 18th day of June, 1942.

[Seal]

CLARENCE H. WILSON

Notary Public in and for the
County of Kings, State of
California.

My commission expires January 20, 1943.

State of California,
County of Kings—ss.

C. H. Glenn, being duly sworn, deposes and says:

That he is an officer, to-wit, President of Corcoran Telephone Exchange, a corporation, one of the respondents in the above entitled action and that he makes this Affidavit for and on behalf of said cor-

poration as respondent; that he has read the foregoing Answer and Motion and knows the contents thereof; that the same is true, except as to the matters which are therein stated on information or belief, and as to those matters he believes it to be true.

C. H. GLENN

Subscribed and sworn to before me this 18th day of June, 1942.

[Seal]

CLARENCE H. WILSON

Notary Public in and for the
County of Kings, State of
California.

My commission expires January 20, 1943.

TESTIMONY

[Title of Board and Cause.]

Women's Hall,
Corcoran, California
Thursday, May 18, 1939

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 o'clock A. M.

Before: John T. Lindsay, Trial Examiner.

Appearances:

FRANK A. MOURITSEN,

Los Angeles, California,

Attorney on behalf of the National Labor Relations Board; and

FRANCIS J. McTERNAN, JR.,

Washington, D. C.,

Attorney on behalf of the National Labor Relations Board.

E. F. PRIOR,

309 Broad Avenue,

Wilmington, California,

on behalf of the Cotton Products and Grain Mill Workers' Union, Local No. 21798, A.F.L.

ROGERS AND CLARK,

by WEBSTER V. CLARK,

and JOHN PAINTER,

111 Center Building, San Francisco, California,
on behalf of Associated Farmers of Kings County,
Inc., a corporation.

SIDNEY J. W. SHARP

and M. WINGROVE,

by M. WINGROVE,

Hanford, California,

on behalf of J. G. Boswell Company, a corporation,
and Corcoran Telephone Exchange, a corporation.

PROCEEDINGS

Trial Examiner: The hearing in the matter of the J. G. Boswell Company, a corporation, Associated Farmers of Kings County, Inc., a corporation, and Corcoran Telephone Exchange, a corporation, and Cotton Products and Grain Mill Workers'

Union, Local No. 21798, AFL, Case No. XXI-C-1025 is now called to order.

Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: Let the record show that the J. G. Boswell Company Employees' Association of Corcoran and Tipton were served with papers, and that no petition to intervene has been filed either with the Regional Director of the Los Angeles office, and that no petition to intervene has been presented at this time to the Trial Examiner.

Mr. McKeever: We are here, however.

Mr. Clark: In response to a subpoena, Mr. Examiner.

Trial Examiner Lindsay: You have filed no petition to intervene?

Mr. McKeever: No.

Trial Examiner Lindsay: What is your position with the Association?

Mr. McKeever: I am Secretary of the Association.

Mr. Mouritsen: Mr. Examiner, I now offer Board's Exhibit 1 with the appropriate subdivisions, the formal pleadings filed in this matter. [3*]

As Board's Exhibit 1(a), by reference, the copy of the rules and regulations of the National Labor Relations Board, series 1 as amended, dated April 27, 1936.

As Exhibit 1(b) the original charge in this mat-

*Page numbering appearing at top of page of original Reporter's Transcript.

ter, the jurat of which bears date of November 21, 1938.

As 1(c), the order of the Board transferring the proceedings from the Twentieth to the Twenty-First Region of the National Labor Relations Board, signed and sealed by Nathan Witt, Secretary of the Board.

As 1(d), the amended charge in this matter, the jurat of which bears date of January 17, 1939.

As 1(e), the second amended charge filed in this matter, the jurat of which bears date of February 6, 1939.

Mr. Clark: May I interrupt to ask a question, Mr. Examiner?

Trial Examiner Lindsay: Yes.

Mr. Clark: May I ask counsel if both charges or all of the charges referred to by and up to this point were made solely by Mr. E. F. Prior as business representative of the Cotton Products and Grain Mill Workers' Union, Local 21798, AFL?

Mr. Mouritsen: The second amended charge was filed by A. H. Petersen, P-e-t-e-r-s-e-n.

Mr. Clark: Of what organization, please?

Mr. Mouritsen: He is designated as representative of the [4] American Federation of Labor.

Mr. Clark: You mean no specific union?

Mr. Mouritsen: No. He has filed on behalf of the Local here involved, No. 21798, but his official designation is representative.

Mr. Clark: I see. All right.

How about the first charge?

Mr. Mouritsen: Other than that one, the others were filed by E. F. Prior.

Mr. Clark: In no instance is any charge up to this point filed by Mrs. Dunn—I am trying to get her first name—Mrs. Margaret Dunn?

Mr. Mouritsen: No, not up to this point.

Mr. Clark: Very well. My reason, Mr. Examiner, is that those charges were not served on us, you see. From this point on various charges were served upon us and we are in position to know by whom they are made because we have copies.

Trial Examiner Lindsay: Don't you have copies of the charges that were not served on you?

Mr. Clark: No, we do not.

Trial Examiner Lindsay: But the final charge?

Mr. Clark: Yes, we have that.

Trial Examiner Lindsay: On which this case is based?

Mr. Clark: Precisely. Starting now, with the third amended charge, copies were served upon us. [5]

Mr. Mouritsen: As Board's Exhibit 1(g), the complaint in the matter bearing date of March 4, 1939.

As 1(h), an affidavit of service of the complaint, third amended charge, and rules and regulations dated March 7, 1939.

As 1(i), two pages to which are attached registered return receipts of the United States Post Office showing receipt of the complaint.

As 1(j), an order of the Acting Regional Director, Twenty-First Region, continuing the matter indefinitely. The order bears date March 6, 1939.

As 1(k), an affidavit of service of the order continuing the matter, which affidavit is dated March 6, 1939.

As 1(l), two sheets to which are attached registered return receipts of the United States Postal Department, indicating receipt of the order continuing the hearing.

As 1(m), an order signed by the Acting Regional Director of the Twenty-First Region, extending indefinitely the time for answer in this matter, which order is dated March 10, 1939.

As 1(n), an affidavit of service of the order extending time to answer, which order is dated March 10—which affidavit is dated March 10, 1939.

As Board's 1(o), a single sheet to which is attached registered return receipt from the United States Post Office [6] Department indicating receipt of the order extending time to answer.

As 1(q), the charge of Margaret A. Dunn against the Corcoran Telephone Exchange, which jurat bears date March 13, 1939.

Mr. Clark: To which we object, may it please your Honor. It was never served upon the respondent in this proceeding and therefore, under the rules and regulations, and under the National Labor Relations Act, can not be the subject of a foundation for a complaint.

Mr. Mouritsen: Mr. Examiner, may I be heard on that matter?

Trial Examiner Lindsay: Yes.

Mr. Mouritsen: A——

Mr. Clark (Interrupting): Just one moment, please. For the record I think the objection should go on behalf of all respondents.

Mr. Wingrove: That is agreeable. I join in the making of that objection.

Mr. Mouritsen: Mr. Examiner, the fourth amended charge, which I will presently introduce, filed by E. F. Prior, incorporates therein the charges filed by Margaret A. Dunn against the Corcoran Telephone Exchange, and that, of course, is in accordance with the rules and regulations which provide that any person may file a charge. [7]

Trial Examiner Lindsay: Was that particular charge served upon all respondents?

Mr. Mouritsen: I do not believe that it was, your Honor.

Mr. Clark: I think that the charge—the fourth amended charge was.

Mr. Mouritsen: The fourth amended charge was.

Trial Examiner Lindsay: That is the one.

Mr. Wingrove: This one made by Mrs. Dunn was never served as far as I know.

Mr. Clark: May I be heard on that, Mr. Examiner, briefly?

Trial Examiner Lindsay: Yes.

Mr. Clark: Is counsel finished?

Mr. Mouritsen: Yes, I finished my statement.

Mr. Clark: I just wanted to point out to the Examiner that even though, or assuming, rather, first

off we have never seen the charge which Mrs. Dunn purportedly filed with the Board, with the Regional Director, nor have we seen a copy of it. Now counsel states to the Examiner that the fourth amended charge filed by one E. F. Prior, as a representative of the Cotton Products and Grain Mill Workers' Union, Local 21798, incorporated the matter, the substance of the Dunn charge. There is no indication in that, in the charge filed by Mr. Prior, that he is acting for Mrs. Dunn and an examination of the complaint which is issued on the [8] Prior charge will show that the whole thing becomes an impossibility, Mr. Examiner, because the section of the Act which is relied upon as constituting unfair labor practices here, is that which charges the various respondents with having discriminated against Mrs. Dunn because of her joining a labor union.

Then, in the same breath, it alleges that she is employed by the telephone exchange. There is no allegation that she is or intended to become or ever was a member of this Cotton Products and Grain Mill Workers' Union, and I submit that so far as the Dunn matter is concerned, it is not based upon a charge within the meaning, letter, and spirit of the regulations in the Act and, therefore, should not be gone into at this time by the Examiner.

Trial Examiner Lindsay: Is it your theory that a representative of the AFL does not have the right to file a charge on behalf of a member of a local union?

Mr. Clark: Absolutely not, but it is my theory

that a representative of the American Federation of Labor or any other labor organization does not have the authority to file a charge on behalf of a person who is not in fact, nor disclosed by the pleadings, or the charge, to be even eligible for membership in that organization. In other words, Mr. Prior couldn't file another charge with the Board for me, for instance, if I were not engaged in the craft or in the line of [9] activity covered by the jurisdiction of his union.

Trial Examiner Lindsay: Well, do you mean an individual does not have the right to ask a representative of a national union——

Mr. Clark (Interrupting): No, no. I do not mean that for a minute.

Trial Examiner Lindsay: Wait until I finish my question—who is representing a local, does not have the authority to authorize the local through the representative to represent him?

Mr. Clark: I wouldn't even go that far, Mr. Examiner. My point is this: There there is no showing of authority whatsoever, either on the face of the complaint or in the charge for Mr. Prior to act in any respect for Mrs. Dunn. Mrs. Dunn filed a charge with the Board, but instead of serving us with a copy of that charge enabling us to meet a complaint based on that, squarely, you see—instead of that, the only notice we have is in this fourth amended charge where Prior comes in, designated here as the representative of the union to which Mrs. Dunn couldn't possibly be eligible for membership and makes certain general statements with regard to her which,

by the way, are conclusions as you will see when you read the complaint, to the effect that all of these respondents have discriminated against this woman for "engaging in union activities," which means nothing. I take it we are [10] entitled to more specific specifications than that, Mr. Examiner, and under the rules of the Board and under the plain language of the Act, we are entitled to be served with a copy before we are asked to meet a complaint issued upon it—a copy of the charged served either by Mrs. Dunn or authorizedly on her behalf.

Trial Examiner Lindsay: You mean that you are entitled to be served with some document——

Mr. Clark (Interrupting): With a copy of the Dunn charge.

Trial Examiner Lindsay: Just a minute. You mean to say you are entitled to be served with some document showing that this Dunn woman authorized the representative of the A. F. of L. to file charges in her behalf? [11]

Mr. Clark: Or the complaint will show that there is, in common sense, that authority. Don't you see? This complaint shows that it couldn't possibly exist except it be an authority tantamount, we will say, to my going to Mr. Prior as another individual and saying "Please file a charge for me before the Labor Relations Board because I don't know anything about that."

Now, in that situation, I take it, there must be some indication in the complaint or in the charge itself that Prior was authorized to act for such other person.

Trial Examiner Lindsay: And that authorization, you contend, must be served upon you?

Mr. Clark: It must have been shown by the charge. That is all I am interested in.

May I make one statement, Mr. Examiner? I must apologize for not rising, but I am only about two weeks out of a hospital where I was ill for some three weeks.

Trial Examiner Lindsay: That is all right.

Mr. Clark: I will ask your indulgence.

Mr. Wingrove: Further, Mr. Examiner, it is not even alleged in the complaint or in the charges that Mrs. Dunn did engage in any Union activities. It is alleged in there that she was discharged by the Respondent Telephone Exchange solely because she was suspected of having engaged in Union activities. It is not even alleged that she was a member of the Union, or had any connection whatsoever with any Union, the complaining [12] Union who filed this charge, or any other labor Union.

Mr. Clark: I do not contend that that is necessary as a part of my objection. I think the Examiner has the point of the objection I made.

Trial Examiner Lindsay: Yes. It isn't your contention that an individual must actually be a member of the Union before he can—that is, before such person has a charge against a respondent for Union activities?

Mr. Clark: No, that is not the point.

Trial Examiner Lindsay: You do not contend that?

Mr. Clark: Absolutely not.

Trial Examiner Lindsay: You may proceed.

Mr. Clark: Of course there is no ruling.

Trial Examiner Lindsay: It isn't offered.

Mr. Clark: It is subject to that?

Trial Examiner Lindsay: I haven't ruled on the offer yet.

Mr. Clark: I understand.

Trial Examiner Lindsay: I will not rule on it until after the rest of them have been presented to me. Q is the one in question.

Mr. Mouritsen: As 1-R, the fourth amended charge filed in this matter, the jurat of which bears date May 4th, 1939. That also is filed by E. F. Prior.

Mr. Clark: Same objection as to the matters referring to Mrs. Margaret Dunn, and I make the objection simply for the [13] record, and stand upon the objection just made.

Mr. Wingrove: I also join in that objection on behalf of the Telephone Exchange.

Mr. Mouritsen: As 1-S, amended complaint filed in the matter, which amended complaint bears date May 6th, 1939.

Trial Examiner Lindsay: What number is that?

Mr. Mouritsen: 1-S.

Mr. Clark: With respect to the amended complaint, I don't know that the objection is proper relating to the allegation concerning Mrs. Dunn, but I simply advise the Examiner that we are going to make a motion to exclude the taking of any testimony under those allegations. I want to be timely. It is the same point.

Trial Examiner Lindsay: Yes.

Mr. Mouritsen: As 1-T, an affidavit of service of the amended complaint, amended notice of hearing and fourth amended charge in the matter, and copies of the Rules and Regulations, which bears date May 6th, 1939.

I also wish to correct the description of the amended complaint which is Board's 1-S, to state that it is the amended complaint and amended notice of hearing also, as Board's 1-S.

As 1-U, an affidavit of service of the amended complaint upon Mr. Fred G. Sherrill, which affidavit bears date May 6th, 1939.

As 1-V, the sheets to which are attached Registered return [14] receipts of the United States Post Office Department, indicating receipt of the amended complaint, amended notice of hearing and copies of the Rules and Regulations.

As 1-W, an affidavit of service of the subpoenas duces tecum, Numbers 12153 and 12160, which affidavit is dated May 9th, 1939.

Mr. Clark: Will you please identify the person upon whom they were served?

Mr. Mouritsen: They were served respectively upon J. G. Boswell Company and Louis G. Robinson, Superintendent, and upon J. G. Boswell Company Employees' Association of Corcoran and Tipton, and E. M. Roberson, Secretary.

Mr. Clark: Thank you.

Mr. Mouritsen: As 1-X, an affidavit of service of subpoena duces tecum No. 12161 upon Associated

Farmers of Kings County, Inc., and J. B. Boyett, President, which affidavit is dated May 9th, 1939.

As 1-Y, an affidavit of service of subpoena duces tecum No. 12163, upon Fred G. Sherrill, which is dated May 12, 1939.

Mr. Wingrove: Mr. Examiner, I object to that on the ground that the service of that subpoena was accompanied by a letter referring to certain stipulations and that subpoena was not made to be recognized, and that stipulation was furnished by agreement over the telephone with Mr. Mouritsen, I believe. [15] It has no place in this record, and I object to its introduction.

Mr. Clark: I take it the stipulation is going to be introduced.

Mr. Mouritsen: I will offer the stipulation and state at that time, or will state at this time, that response to the service is not being required, but this is merely to indicate the formal papers that have been filed. There is no intention of requiring the return of the subpoena.

Trial Examiner Lindsay: Does that satisfy your objection?

Mr. Wingrove: That will take care of the matter.

Mr. Mouritsen: As 1-Z, a notice to produce documents directed to J. G. Boswell, president of J. G. Boswell Company, which notice is dated May 13th, 1939.

As 1-AA, an affidavit of service of notice to produce documents upon J. G. Boswell, President of

J. G. Boswell Company, which affidavit is dated May 15th, 1939.

As 1-BB, a single sheet to which is attached Registered return receipt of the United States Post Office Department indicating receipt of the notice to produce documents.

Mr. Clark: May I interrupt one moment, Mr. Examiner?

Trial Examiner Lindsay: Yes.

Mr. Clark: Did I understand that that notice to produce was addressed to Mr. Boyett or Mr. Boswell?

Mr. Mouritsen: Mr. Boswell. [16]

Mr. Clark: I see. Thank you.

Mr. Mouritsen: As Board's 1-CC, an affidavit of service by mail of the motion to dismiss, to which is attached the motion to dismiss of the Corcoran Telephone Exchange, which affidavit is dated May 13th, 1939.

As Board's 1-DD——

Trial Examiner Lindsay (Interrupting): Let us go back to 1-CC just a second.

Did you state the motion to dismiss is dated May 19th, 1939?

Mr. Mouritsen: May 13, your Honor, I believe.

Mr. Clark: I wonder if we could have the filing date, Mr. Examiner, the date of its receipt in the office? I take it that the other date does not mean anything. The question is whether it was filed within the proper time.

Mr. Mouritsen: Ordinarily, Mr. Examiner, these documents are not stamped by the office when they

are received. There is no contention by the Board they were not received in sufficient time.

Mr. Clark: Will it be stipulated, then, that the pleadings of all Respondents which consist of answers and motions to dismiss in this matter, were filed within the proper time and received by the Board?

Mr. Mouritsen: It will be so stipulated. There is no contention by the Board they were not received in plenty of [17] time.

Trial Examiner Lindsay: DD is the one you are on now.

Mr. Mouritsen: As Board's Exhibit 1-DD, an affidavit of service by mail of the motion to dismiss of the J. G. Boswell Company, and to the affidavit is attached the original motion to dismiss, the affidavit bearing date of May 13th, 1939.

As Board's Exhibit 1-EE, an affidavit of service by mail of the answer of Respondent J. G. Boswell Company, which affidavit is dated May 15th, 1939, and to which is attached the original answer of Respondent J. G. Boswell Company.

As Board's Exhibit 1-FF, an affidavit of service of the answer of Respondent Corcoran Telephone Exchange, which affidavit is dated May 15th, 1939, and to which is attached the original answer of Respondent Corcoran Telephone Exchange.

As Board's Exhibit 1-GG, the answer of Respondent Associated Farmers of Kings County, Inc. to the amended complaint, which answer is dated May 15th, 1939.

As Board's Exhibit 1-III, the motion to dismiss of the Associated Farmers of Kings County, Inc., which motion is not dated.

Mr. Clark: It was received, however, on the 16th, I think it will be stipulated.

Mr. Mouritsen: Without referring to the particular date, I think our stipulation is to the effect it was received in time. [18]

Mr. Clark: There isn't any time for a motion to dismiss, but I have a telegram which I can introduce.

Trial Examiner Lindsay: There is no point made on it.

Mr. Clark: No point made on it.

Mr. Mouritsen: As Board's Exhibit 1-II, an affidavit of service by mail of the answer and motion to dismiss of Respondent Associated Farmers of Kings County, Inc., which affidavit is dated May 15th, 1939, and to which copies of the answer and motion to dismiss are attached.

As Board's Exhibit 1-JJ, a telegram from George O. Pratt, Chief Trial Examiner of the National Labor Relations Board, designating John T. Lindsay to sit as Trial Examiner in this matter. I am offering this telegram, Mr. Examiner, merely for identification, and I propose to substitute therefor the formal order of the Board designating the Trial Examiner upon its receipt. I have not as yet received an order.

Mr. Clark: No objection.

Mr. Mouritsen: At this time, Mr. Examiner, I offer the documents I have enumerated as Board's Exhibits 1 through the subdivisions noted, and move that they be received in evidence.

Mr. Clark: Aren't you going to offer the stipulation, the stipulation of certain facts?

Mr. Mouritsen: I shall offer that as Board's 2. It is a different matter.

Mr. Wingrove: Mr. Mouritsen, do you mind stating what the [19] date of that telegram is, for my notes?

Mr. Mouritsen: May 16th, 1939. [20]

Trial Examiner Lindsay: I will reserve ruling for the time being, and in order to fully understand your objection, the point of the objection to Board's 1(q)—then I will go into (r) and (s) after that—

Mr. Clark (Interrupting): It is the same objection, Mr. Examiner.

Trial Examiner Lindsay: The same objection to all three. Your main point of objection is, first, that you were not served with a copy of the original charge filed by the Dunn woman?

Mr. Clark: That is one way, Mr. Examiner, of stating a phase of it. The objection is really this: That no charge has been served upon which a complaint issued by the Board as to the Dunn matter can be based. In other words, the rules and the Act require that the charge be made and served upon the parties against whom the complaint is issued. Now our point is that so far as we are concerned there wasn't ever any Dunn charge because it wasn't served on us and we are entitled to that prior to the time we are called upon to answer a complaint.

Trial Examiner Lindsay: But, however, the Dunn matter was brought up in the fourth amended

charge which was signed by Mr. Prior?

Mr. Clark: That is counsel's statement.

Trial Examiner Lindsay: That was served on you? [21]

Mr. Clark: That was served on us, and it is counsel's statement that the Dunn charge as filed with the Board, which we have never seen, was incorporated in the Prior charge which we refer to as the fourth amended charge. That is counsel's statement.

Trial Examiner Lindsay: The document itself does recite something pertaining to the Dunn matter?

Mr. Clark: Precisely. It recites substantially the matter upon which the allegations in the complaint are based so far as Dunn is concerned.

Trial Examiner Lindsay: The fourth amended charge as far as the Dunn woman is concerned?

Mr. Clark: That is true.

Trial Examiner Lindsay: Then the next point is that you object because there is no authority served upon you showing that Prior was authorized to file the fourth amended charge in behalf of Mrs. Dunn, is that correct?

Mr. Clark: Partially so, Mr. Examiner; nor does the complaint show that there is any possibility of Mr. Prior acting authorizedly for Mrs. Dunn. In other words, she is, obviously, on the face of the complaint, not eligible for membership in the union.

Trial Examiner Lindsay: Do I have your objections fairly well in mind?

Mr. Clark: I think you do and I think upon reading the [22] allegations in the amended complaint, Mr. Examiner, and particularly bearing in mind the sections and sub-divisions of the Act referred to with relation to what are unfair labor practices, I think that the point will present itself clearly before you. I don't think we have been served with a proper charge on behalf of Mrs. Dunn. That is all there is to it.

Trial Examiner Lindsay: Outside of Mrs. Dunn you admit you have been served with the proper charges, with the exception of Mrs. Dunn?

Mr. Clark: That is true, except the jurisdictional point raised by the motion to dismiss.

Trial Examiner Lindsay: Now I will reserve ruling on those exhibits and you may present any of the exhibits now that you wish to, as they come in order.

Mr. Mourtisen: Mr. Examiner, at this time I desire to offer as Board's Exhibit 2 a stipulation signed by counsel for respondent, J. G. Boswell Company, and myself as attorney for the National Labor Relations Board, relative to the operations and the commerce engaged in by the J. G. Boswell Company; and it is undated. However, I offer it as of today.

Mr. Clark: For the sake of the record, I will make the objection—I don't want to argue it, Mr. Examiner, but I will make the objection as to the Associated Farmers of Kings County, it is not binding and not probative of any of the matters set forth in the stipulation, and is hearsay. I won't [23] urge it. I simply want it in the record.

Trial Examiner Lindsay: Well, do I understand you signed that stipulation?

Mr. Clark: No, we did not. It was never presented to us.

And we are here, Mr. Examiner, in this peculiar capacity. We are a California corporation. There is no claim made that we are engaged in any interstate business. I am now talking about the Associated Farmers of Kings County, don't you see? And the sole medium of binding us to this proceeding is an allegation in the complaint that we acted in various respects in the interests of Boswell and Company, and therefore an employer within the meaning of sub-division 2, I think it is, of section 2 of the Act.

In other words, we are an individual within a case brought before the Board upon the charge that we have interfered in someone else's business which in turn is engaged in interstate commerce. Now, that being so, I want to make the objection for what it is worth for that purpose in the record that any matters agreed to between Boswell and the Board with respect to its business or what constitutes interstate commerce and so forth isn't evidence against us, because we don't know anything about it, to be quite frank, about what Boswell's business is.

Trial Examiner Lindsay: Well, of course, the bare state- [24] ment as of itself will not—you don't mean—constitute evidence in this hearing by your statement.

Mr. Clark: By my statement?

Trial Examiner Lindsay: Yes.

Mr. Clark: Certainly not. I am not testifying. I am simply presenting a point.

Trial Examiner Lindsay: Has that stipulation been entered into between the Board and the union and the respondent, Boswell Company?

Mr. Mouritsen: Well, it has been entered into between the respondent, Boswell Company, and the Board.

Trial Examiner Lindsay: What is the number of that?

Mr. Mouritsen: I am offering it as Board's Exhibit 2, Mr. Examiner.

Mr. Wingrove: Do you have an extra signed copy for my file? I believe I sent you two copies and I never got one signed copy back.

Mr. Mouritsen: If that hasn't been taken care of, I will take care of it.

Mr. Wingrove: I would like to have it, please.

Trial Examiner Lindsay: No objection to Board's Exhibit 2, as far as you are concerned?

Mr. Wingrove: No objection.

Trial Examiner Lindsay: Board's Exhibit 2 is received in evidence. [25]

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 2.)

BOARD'S EXHIBIT No. 2

United States of America

Before the National Labor Relations Board

Twenty-first Region

Case No. XXI-C-1025

In the Matter of

J. G. BOSWELL COMPANY, a corporation, ASSOCIATED FARMERS OF KINGS COUNTY, INC., a corporation, and CORCORAN TELEPHONE EXCHANGE, a corporation,

and

COTTON PRODUCTS AND GRAIN MILL WORKERS' UNION, LOCAL No. 21798, AFL.

STIPULATION

It Is Hereby Stipulated and agreed by and between J. G. Boswell Company and Frank A. Mouritsen, attorney for National Labor Relations Board that:

J. G. Boswell Company, hereinafter called "Respondent", is a corporation organized under and existing by virtue of the laws of the State of California since October 13, 1925. It is authorized to transact business in the State of Arizona. Respondent is engaged both in the State of Arizona and in the State of California, in the business of growing and financing the growing of cotton, ginning and baling cotton, extracting cottonseed oil from cotton-

seed, selling and distributing cotton, cottonseed oil, cottonseed cake and meal, and purchasing, feeding, and selling cattle. The company owns and operates seven cotton gins, a cottonseed oil mill, and a cattle feed yard in the State of California, and ten gins and a cottonseed oil mill in the State of Arizona. At Corcoran, California respondent operates six cotton gins, a cottonseed oil mill, and a cattle feed yard.

During the fiscal year from July 1, 1937 to June 30, 1938 Respondent engaged in operations as follows:

Cotton ginned and baled in Arizona.....	60,055 bales
Cotton ginned and baled in California..	57,478 bales
Total	117,533 bales

Cottonseed crushed and processed in

California	17,220 tons
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Cottonseed crushed and processed in

Arizona	23,877.875 tons
Total	41,097.875 tons

Cattle purchased in Texas.....	408 head
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Cattle purchased in Arizona	1,771 head
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Cattle purchased in California.....	1,146 head
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Total	3,325 head
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Cattle sold in California	2,407 head
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The remaining cattle were not sold by Respondent during this period.

At the Corcoran plant during the same period, Respondent engaged in the following operations:

Cotton ginned	68,355,839 lbs.
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Cotton seed crushed and processed....	34,440,069 lbs.
---------------------------------------	-----------------

Cotton baled	47,111 bales
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of which 40,138 were owned by Respondent and 6,873 bales were owned by others.

Linters baled5,096 bales
 Cottonseed oil produced.....714,958 gallons
 Cottonseed cake produced,
 approximately10,000 tons

In baling the cotton Respondent used 52,206 patterns, of which the jute came from India and the steel bands from Alabama.

All of the cotton and cottonseed handled at the Corcoran plant was purchased or grown by the Respondent in the State of California. All cattle feeding operations in California of the Respondent were carried on at the Corcoran plant, except as to certain cattle which were fed on pasture. Certain cattle of other parties were fed by Respondent in Arizona, at Litchfield Station, under a contractual arrangement for the feeding thereof.

During the same period the output of Respondent's Corcoran plant was disposed of as follows:

40,138 bales of cotton and 862 bales of linters were shipped out of the State of California by Respondent by means of the Atchison Topeka and Santa Fe Railway Company, and the following steamship companies: Furness (Pacific) Ltd.; Dollar Line (Now American President Lines); General Steamship Corporation; Norton Lilly; Williams Dimond Co.; Interocean Steamship Corporation; America-Hawaiian; N. Y. K.; Mitsui Ltd.; Salen Line; Swayne & Hoyt; 650 bales of linters were sold and shipped to points within the State of

California and 3,584 bales of linters were sold F.O.B. Corcoran, California. 714,958 gallons of cottonseed oil were sold to the Swift and Company Refinery at Vernon, California. Approximately sixty tons of cottonseed cake were shipped outside of the State of California and the remainder was sold or consumed within the State of California.

That on or about June 24, 1938 Respondent paid to Associated Farmers of Tulare County, Inc. the sum of \$103.08, by check made payable to Associated Farmers of Tulare County, Inc.—Mr. Wm. Rosenberg, President, and mailed to 112 East Oak Street, Visalia, California.

That on or about September 20, 1938 Respondent paid W. B. Camp, Treasurer, Associated Farmers of California, P. O. Box 2, Bakersfield, California, the sum of \$287.09.

That on or about March 21, 1939 Respondent paid Associated Farmers of California, at 472 Russ Building, San Francisco, California, the sum of \$240.42.

It Is Further Stipulated and Agreed that either party to this stipulation may introduce additional testimony concerning the matters herein stipulated.

J. G. BOSWELL COMPANY,

By M. WINGROVE,

Its Attorney.

FRANK A. MOURITSEN,

Attorney for The National
Labor Relations Board.

[Endorsed]: Filed 5/18/39.

Mr. Clark: An exception, your Honor.

Trial Examiner Lindsay: Yes.

Mr. Clark: As to the objection just made in behalf of Associated Farmers of Kings County.

Trial Examiner Lindsay: And may I state that anyone that objects to any statement or document, and the ruling is adverse to that particular part, the record will automatically show an exception whether you ask it or don't ask it.

Mr. Clark: I appreciate that. In other words, it is simply deemed that an exception has been taken to any adverse ruling on any question or objection?

Trial Examiner Lindsay: Yes.

Now, if there are no other papers now, we will adjourn until 2:00 o'clock this afternoon.

Mr. Mouritsen: Mr. Examiner, there are a number of witnesses who are under subpoena. Would they be instructed by the Examiner to return at that time?

Trial Examiner Lindsay: Yes.

All witnesses who have been subpoenaed by the Board will be in attendance during each session until after such person or persons have testified, and then do not leave the hearing until you have been released by all counsel.

We will adjourn until 2:00 o'clock.

(Whereupon, at 10:20 o'clock a. m., the hearing was recessed until 2:00 o'clock p. m. of the same day.) [26]

After Recess

(Whereupon, at 2:00 o'clock p. m., the hearing was resumed, as follows:)

Trial Examiner Lindsay: The hearing is called to order.

Now I am going to take up the written motions first and then I will pass on the oral motions that came up this morning.

The motion to dismiss, signed by J. B. Boyett, B-o-y-e-t-t, president of the Associated Farmers of Kings County, Inc., is denied.

Then there is a second motion by J. B. Boyett, president of the Associated Farmers of Kings County, Inc., which is denied.

Mr. Clark: Mr. Examiner, I understood—it was my understanding there was only one motion to dismiss filed by the Associated Farmers of Kings County. I think probably there is a copy that is attached to an affidavit of mailing, but just the one motion by the Associated Farmers.

Trial Examiner Lindsay: I am sorry. There are two here and neither one of them is dated, so I have no way of knowing.

Mr. Clark: One is a carbon copy attached or annexed to an affidavit of mailing dated May 15th, and the other is the original of that motion.

Trial Examiner Lindsay: Oh, I see.

Mr. Clark: There is only one motion to dismiss which was [27] simply made for the purpose of the record by the Associated Farmers of Kings County.

Trial Examiner Lindsay: The motion to dismiss is denied.

Mr. Clark: I understand there is the same understanding with respect to an exception to an objection which applies to a denial of a motion as it does to the objection?

Trial Examiner Lindsay: Yes, to all adverse rulings.

The written motion of the respondent J. G. Boswell Company, signed by Sidney J. W. Sharp and M. Wingrove, attorneys for respondent, is denied.

The written motion to dismiss filed by the Corcoran Telephone Exchange and signed by—what is that name?

Mr. Wingrove: C. H. Glenn.

Trial Examiner Lindsay: By C. H. Glenn, president and manager of the said company is denied.

Then there is a motion to dismiss as to Margaret A. Dunn. Now is there anything further that you would like to say about that, Mr. Clark?

Mr. Clark: No, Mr. Examiner, there is not. There is an objection to the introduction in evidence of the complaint or the charge, rather, which counsel for the Board states was filed by Mrs. Dunn and which the record shows was never served upon us. That is before the Examiner.

Trial Examiner Lindsay: Yes. [28].

Have you anything further to say on that, Mr. Wingrove?

Mr. Wingrove: No. I believe that the objection has been clearly discussed.

Trial Examiner Lindsay: Anything further to say on that, Mr. Mouritsen?

Mr. Mouritsen: Mr. Examiner, as I understand counsel's objection to the introduction, it was, first, that we have presented no evidence showing authority on behalf of Mr. Prior to file for Mrs. Dunn and, secondly, that the original charge filed by Mrs. Dunn was not filed upon counsel. I believe that covers the scope of the objection. [29]

The procedure that has been followed in this case is in full accord with the provisions of the Act, Mr. Examiner, and with the provisions of the Rules and Regulations.

In Article 2, Section 1 of the Act—which I will not read—that should be Article 2, Section 1 of the Rules and Regulations, provides that the charge may be filed or may be made by any person or labor organization, and in such matters as this we do not have the ordinary provision governing the law of Agency, where the authority must be clearly set out or implied in the action of the parties, but public policy is involved in that a violation of the laws of the United States has been charged, so that it is not necessary either under the Act or the Rules and Regulations that this authority be set out, as requested by counsel.

With reference to the fact that no copy of the original charge filed by Mrs. Dunn was served upon counsel or upon the parties, such act is also not required under the Rules and Regulations of the Board or the Act, the terms of the Act itself.

In the Rules and Regulations of the Board, Article 2, Section 5 covers the filing or the service of a charge upon the parties to the action or the hearing. In Article 2, Section 5, it provides that a copy of the charge shall be attached to the complaint, the complaint being based upon the charge that is filed therewith. When this is read in con- [30] junction with the provisions of the Act which is found in Section 10 on pages 22 and 23, the only provision that the Act contains regarding the service of the charge is set out in the following words, and I read therefrom, which is under Section B on page 23:

“Whenever it is charged that any person has engaged in or is engaged in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof.”

In other words, Mr. Examiner, it is not required under either the Rules and Regulations or the terms of the Act itself that a copy of the original charge be served upon the parties. We are proceeding only upon the fourth amended charge and complaint which has been issued thereon, and the Respondent will be held to answer in this hearing only for the charges with which they have been served, and with the complaint or with the allegations set out in the complaint.

Mr. Clark: Well, in that event, may it please the Examiner, the objection should be sustained to the introduction of the Dunn charge upon the ground it is incompetent and irrelevant.

As I understand counsel's statement now, it is that we [31] are only concerned with the fourth amended charge, and is making that as to anyone and with respect to anyone authorized to be appeared for.

If that is true, then, there is no place in the record for the admission into evidence of a charge which counsel states was filed with the Board by Mrs. Dunn. That is the objection I am making, may it please the Examiner.

It is true that the Act reads as counsel says it does—I mean the Regulations——

“A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person or labor organization.”

That is good.

This is an objection to a charge, an unfair charge, which Mrs. Dunn purportedly filed with the Board, and not the fourth amended charge that we are faced with here.

My objection to that is that the prior Dunn charge does not meet this charge of the Regulations:

“After a charge has been filed, if it appears to the Regional Director that a proceeding in respect thereto should be instituted, he shall

issue and cause to be served upon the respondent and the person or labor organization making the charge (hereinafter referred to as the 'parties to the proceeding') a formal complaint in the name of the Board stating the charges and containing a notice of hearing before a Trial [32] Examiner at a place therein fixed and at a time not less than five days after the service of the complaint. A copy of the charge shall be attached to the complaint."

The copy of the Dunn charge was not served upon us and has no place in the proceedings. [33]

Trial Examiner Lindsay: The Dunn charge is stated in substance in the fourth amended charge, and the fourth charge was made a part of the complaint and all parties were served with the complaint and with the fourth amended charge.

The fourth amended charge was filed by Mr. Prior who was at that time and now is, as I understand it—unless he has withdrawn since that charge was filed—if he hasn't, he is still acting as representative—so at that time he was acting as representative of the Union, and as such, he filed, signed that charge, and filed the same with the Board in behalf of Mrs. Dunn. What is that name?

Mr. Mouritsen: Margaret A.

Trial Examiner Lindsay: In behalf of Margaret A. Dunn and in behalf of the others involved in the hearing.

And for that reason, I am going to deny your motion both as to the charge and the one made as

to the complaint which covers,—which are in effect to Board's Exhibit 1 Subdivision Q and 1 Subdivision R and 1 Subdivision S. Is that right?

Mr. Clark: We all understand what Exhibits, Mr. Examiner, the motion is made to. There are three of them. It is an identical matter in each one.

Trial Examiner Lindsay: You may have an exception.

And Board's Exhibit 1, Subdivision A to Z, both inclusive, [34] 1-AA to JJ, both inclusive, are received in evidence.

(Thereupon, the documents above referred to were received in evidence and marked as Board's Exhibits Nos. 1-A to 1-Z and 1-AA to 1-JJ inclusive, respectively.)

BOARD'S EXHIBIT No. 1-CC

[Title of Board and Cause.]

MOTION TO DISMISS

Now comes Corcoran Telephone Exchange, a corporation, one of the respondents above named, and respectfully moves the National Labor Relations Board, through its agent, the Regional Director for the Twenty-first Region, to dismiss the above entitled proceeding as to said respondent, and to dismiss the charges on file herein against said respondent.

Said motion is made upon the ground that no act of said respondent, or to which said respondent is a party, is in commerce, or affects commerce, or burdens or obstructs commerce or the free flow of commerce, or has led or tended to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce. Said motion is made upon the further ground that the National Labor Relations Board has no jurisdiction over said respondent.

Said motion is made upon this written Notice to Dismiss and upon the records and files of this case.

CORCORAN TELEPHONE
EXCHANGE,

By C. H. GLENN,

President and Manager.

SIDNEY J. W. SHARP,

M. WINGROVE,

Hanford, California,

Attorneys for said Respond-
ent.

Due service and receipt of a copy of the foregoing Motion to Dismiss is hereby acknowledged this 12th day of May, 1939.

SIDNEY J. W. SHARP,

M. WINGROVE,

Attorneys for J. G. Boswell
Company, one of the Re-
spondents above named.

[Title of Board and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Kings—ss.

Nellie Strain, being sworn, says that she is a citizen of the United States, over eighteen years of age, a resident of Kings County, and not a party to the within proceeding.

That affiant's business address is Room 22, Wealth Center Building, Hanford, California.

That on the 13th day of May 1939, affiant served the attached Motion to Dismiss upon each of the following named parties to the above entitled proceeding, to wit: Associated Farmers of Kings County, Inc., and Cotton Products and Grain Mill Workers' Union, Local No. 21798, AFL, by placing a copy of said Motion to Dismiss in an envelope addressed to Webster V. Clark, the attorney of record for Associated Farmers of Kings County, Inc., one of the respondents in said proceeding, at the address of said attorney, as follows:

WEBSTER V. CLARK,

Attorney at Law, 111 Sutter
Street, San Francisco, Cali-
fornia.

and by placing a copy of said Motion to Dismiss in an envelope addressed to E. F. Prior, business representative of Cotton Products and Grain Mill Workers' Union, Local No. 21798, AFL, one of the

parties to said proceeding, at the address of said business representative, as follows:

E. F. PRIOR,

Business Representative, 309
Broad Avenue, Wilmington,
Calif.

That each of said envelopes was then sealed and postage prepaid thereon, and on said 13th day of May 1939 each of said envelopes was deposited in the United States postoffice in Hanford, California; that there is delivery service by United States mail at the places so addressed and regular communication by United States mail between the place of mailing and the places so addressed.

NELLIE STRAIN.

Subscribed and sworn to before me this 13th day of May 1939.

JOHN F. PRYOR,

Notary Public in and for the
County of Kings, State of
California.

[Endorsed]: Filed 5/18/39.

BOARD'S EXHIBIT No. 1-DD

[Title of Board and Cause.]

MOTION TO DISMISS

Now comes J. G. Boswell Company, a corporation, one of the respondents above named, and respectfully moves the National Labor Relations Board, through its agent, the Regional Director for the

Twenty-first Region, to dismiss the above entitled proceeding as to said respondent, and to dismiss the charges on file herein against said respondent.

Said motion is made upon the ground that no act of said respondent, or to which said respondent is a party, is in commerce, or affects commerce, or burdens or obstructs commerce or the free flow of commerce, or has led or tended to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce. Said motion is made upon the further ground that the National Labor Relations Board has no jurisdiction over said respondent.

Said motion is made upon this written Notice to Dismiss and upon the records and files of this case.

J. G. BOSWELL COMPANY,
By LOUIS T. ROBINSON,
Assistant Secretary.
SIDNEY J. W. SHARP,
M. WINGROVE,
Hanford, California,
Attorneys for said Respondent.

Due service and receipt of a copy of the foregoing Motion to Dismiss is hereby acknowledged this 12th day of May, 1939.

SIDNEY J. W. SHARP,
M. WINGROVE,
Attorneys for Corcoran Telephone Exchange, one of the Respondents above named.

[Title of Board and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Kings—ss.

Nellie Strain, being sworn, says that she is a citizen of the United States, over eighteen years of age, a resident of Kings County, and not a party to the within proceeding.

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WEBSTER V. CLARK,

Attorney at Law, 111 Sutter
Street, San Francisco, California.

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E. F. PRIOR,

Business Representative, 309
Broad Avenue, Wilmington,
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That each of said envelopes was then sealed and postage prepaid thereon, and on said 13th day of May 1939 each of said envelopes was deposited in the United States postoffice in Hanford, California; that there is delivery service by United States mail at the places so addressed and regular communication by United States mail between the place of mailing and the places so addressed.

NELLIE STRAIN.

Subscribed and sworn to before me this 13th day of May 1939.

[Seal] JOHN F. PRYOR,

Notary Public in and for the
County of Kings, State of
California.

[Endorsed]: Filed 5/18/39.

BOARD'S EXHIBIT No. 1-EE

[Title of Board and Cause.]

ANSWER OF RESPONDENT

J. G. BOSWELL COMPANY

J. G. Boswell Company, a corporation, designated as one of the respondents in the above entitled pro-

ceeding and therein called "Respondent", in answer to the amended complaint filed therein by the National Labor Relations Board, admits, denies, and alleges as follows:

1. Answering paragraph 1 of said amended complaint, this respondent admits that it is and at all times in said amended complaint mentioned has been a corporation organized and existing under and by virtue of the laws of the State of California, and at all times therein mentioned has engaged in and now engages in the business of growing and financing the growing of cotton, feeding cattle, ginning and baling cotton, extracting cottonseed oil from cottonseed, and the processing, selling and distributing of cotton, cottonseed oil, and cottonseed cake and meal; and this respondent admits that its main office is situated at 354 South Spring Street, in the City of Los Angeles, California.

This respondent also admits that it owns and operates offices, gins and/or mills at the following places: Corcoran, and Tipton, all in the State of California; and Phoenix, Buckeye, Coolidge, Scottsdale, and Litchfield Park, all in the State of Arizona, but denies that it owns and/or operates offices and/or gins and/or oil mills, at Bakersfield, Mendota, Porterdales, Tulare, Fresno, McFarland, Calipatria, Blythe, or Calexico, in the State of California, or at either or any of said places in said state, or at Yuma, Somerton, Parker, Camelback, Litchfield, or West Chandler, in the State of Arizona, or at either or any of said places in said state.

Further answering said paragraph 1, this respondent alleges that it owns and/or operates an office, gin and/or oil mill at each of the following named places in the State of Arizona, to wit: Litchfield Station, Chandler, and Sasuarita, but denies that it owns and/or operates offices, gins and/or oil mills at any or either of the places, either in the State of California or in the State of Arizona, except the places which are hereinabove admitted and alleged.

2. Answering paragraph 2 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in the portion of said paragraph commencing with the words "Associated Farmers is" to and including the words "by the National Labor Relations Act", and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said portion of said paragraph 2.

Further answering said paragraph 2, this respondent denies, generally and specifically, that Associated Farmers, at all times mentioned in said amended complaint, or at any time or times at all, has acted directly and indirectly, or has acted directly or indirectly, in the interests of this respondent.

Further answering said paragraph 2 of said amended complaint, this respondent states that it is without knowledge as to whether or not Associated Farmers is an employer within the meaning of Section 2, subdivision (2) of the Act, or is an employer

at all, and upon such lack of knowledge this respondent denies the allegation in said paragraph 2 that Associated Farmers is an employer within the meaning of Section 2, subdivision (2) of the Act, or that it is an employer at all.

3. [This respondent states that it is without knowledge as to any of the matters alleged in paragraph 3 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 3.

4. Answering paragraph 4 of said amended complaint, this respondent admits that portion thereof commencing with the words "Respondent in the course" to and including the words "to the Corcoran plant in the State of California;"

Further answering said paragraph 4 of said amended complaint this respondent denies each and every, all and singular, generally and specifically, all the allegations of said paragraph 4 except the portion of said paragraph which is hereinabove admitted.

5. This respondent states that it is without knowledge as to any of the matters alleged in paragraph 5 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 5.

6. Answering paragraph 6 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the al-

legations set forth and contained in said paragraph 6.

Further answering said paragraph 6, this respondent alleges that if any of the acts or statements mentioned, described, or referred to in said paragraph 6 were in fact done or made by any of its officers, agents, or employees, any and all acts so done were the acts of individuals and were unauthorized, and any and all statements so made were expressions of individual unauthorized opinions, and were neither the acts nor expressions of this respondent.

7. Answering paragraph 7 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 7.

8. Answering paragraph 8 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 8.

Further answering said paragraph 8, this respondent alleges that W. R. Johnston, Stephen J. Griffin, and Elmer Eller, named in said paragraph, were employed in the performance of seasonal work in and about the plant of respondent at Corcoran, California; that there was a very short ginning season in 1938, and consequently the usual and ordinary seasonal decline in ginning occurred earlier than normal, and it became necessary for this respondent to curtail its ginning operations, and on

or about November 17, 1938, the said three employees were laid off, solely and entirely due to seasonal decline in operations, and not for the reasons, or any thereof, asserted in said paragraph 8.

Further answering said paragraph 8, this respondent alleges that Eugene Clark Ely, who is named therein, left the employ of this respondent on or about January 30, 1939, of his own free will and accord, and while work was still available for him, and that he left this respondent's employ without any notice of his intention so to do, and without advising this respondent or his reasons therefor, and that he was neither laid off nor discharged.

9. Answering paragraph 9 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 9.

10. Answering paragraph 10 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 10.

11. Answering paragraph 11 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 11.

12. Answering paragraph 12 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 12.

13. Answering paragraph 13 of said amended

complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 13.

14. Answering paragraph 14 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 14.

15. Answering paragraph 15 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 15.

16. Answering paragraph 16 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 16.

17. Answering paragraph 17 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 17.

18. Answering paragraph 18 of said amended complaint, this respondent denies, each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 18.

19. Answering paragraph 19 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 19.

20. Answering paragraph 20 of said amended complaint, this respondent admits that on or about January 20, 1939, the Union instituted a boycott of respondent's products and stationed pickets at

respondent's Corcoran plant, and said activities are being carried on at the present time, but this respondent is without knowledge as to the cause or reason for such activities, and upon such lack of knowledge this respondent denies the allegation in said paragraph 20 that such activities were instituted and are being carried on because of the unfair labor practices alleged in said amended complaint.

Further answering said paragraph 20, this respondent denies that it did engage in or that it is engaging in the unfair labor practices, or any thereof, alleged in said amended complaint.

21. Answering paragraph 21 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 21.

22. Answering paragraph 22 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 22.

23. Answering paragraph 23 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 23.

24. Answering paragraph 24 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 24.

25. Answering paragraph 25 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said

paragraph 25 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 25.

26. Answering paragraph 26 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 26.

27. Answering paragraph 27 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 27.

28. Answering paragraph 28 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 28 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 28.

Further answering said paragraph 28, this respondent alleges that whatever acts or things were done either by Associated Farmers or by the Exchange, or by either thereof, were done independently of and without the knowledge of this respondent, and were not authorized by this respondent, and that said Associated Farmers and said Exchange never at any time to the knowledge of this respondent acted either directly or indirectly in the interests of this respondent as to any of the matters alleged in said paragraph 28, or by or under its authority.

29. Answering paragraph 29 of said amended

complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 29.

30. Answering paragraph 30 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 30.

31. Answering paragraph 31 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 31 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 31.

Further answering said paragraph 31, this respondent alleges that whatever acts or things were done either by Associated Farmers or by the Exchange, or by either thereof, were done independently of and without the knowledge of this respondent, and were not authorized by this respondent, and that said Associated Farmers and said Exchange never at any time to the knowledge of this respondent acted either directly or indirectly in the interests of this respondent as to any of the matters alleged in said paragraph 31, or by or under its authority.

32. Answering paragraph 32 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 32.

33. Answering paragraph 33 of said amended

complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 33 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 33.

34. Answering paragraph 34 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 34 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 34.

35. Answering paragraph 35 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 35.

36. Answering paragraph 36 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 36 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 36.

37. Answering paragraph 37 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 37 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 37.

Wherefore, said respondent J. G. Boswell Company, a corporation, prays that the said amended complaint and the charges on file herein be dismissed as to said respondent.

J. G. BOSWELL COMPANY,
By LOUIS T. ROBINSON,
Assistant Secretary,
Corcoran, California.

Subscribed and sworn to before me this 15th day of May, 1939.

[Seal] HORACE LEMORE,
Notary Public in and for the
County of Kings, State of
California.

Due service and receipt of a copy of the foregoing Answer of Respondent J. G. Boswell Company, is hereby acknowledged, this 15th day of May, 1939.

SIDNEY J. W. SHARP,
M. WINGROVE,
Attorneys for Corcoran Tele-
phone Exchange, one of the
Respondents above named.

[Title of Board and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Kings—ss.

Nellie Strain, being sworn, says that she is a citizen of the United States, over eighteen years of age,

a resident of Kings County, and not a party to the within proceeding.

That affiant's business address is Room 22, Wealth Center Building, Hanford, California.

That on the 15th day of May 1939, affiant served the attached Answer of Respondent J. G. Boswell Company upon each of the following named parties to the above entitled proceeding, to wit: Associated Farmers of Kings County, Inc., and Cotton Products and Grain Mill Workers' Union, Local No. 21798, AFL, by placing a copy of said answer in an envelope addressed to Webster V. Clark, the attorney of record for Associated Farmers of Kings County, Inc., one of the respondents in said proceeding, at the address of said attorney, as follows:

WEBSTER V. CLARK,

Attorney at Law, 111 Sutter
Street, San Francisco, California.

and by placing a copy of said answer in an envelope addressed to E. F. Prior, business representative of Cotton Products and Grain Mill Workers' Union, Local No. 21798, AFL, one of the parties to said proceeding, at the address of said business representative, as follows:

E. F. PRIOR,

Business Representative, 309
Broad Avenue, Wilmington,
Calif.

That each of said envelopes was then sealed and postage prepaid thereon, and on said 15th day of

May 1939 each of said envelopes was deposited in the United States postoffice in Hanford, California; that there is delivery service by United States mail at the places so addressed and regular communication by United States mail between the place of mailing and the places so addressed.

NELLIE STRAIN.

Subscribed and sworn to before me this 15th day of May 1939.

[Seal] HORACE LEMORE,

Notary Public in and for the
County of Kings, State of
California.

[Endorsed]: Filed 5/18/39.

BOARD'S EXHIBIT No. 1-FF

[Title of Board and Cause.]

ANSWER OF RESPONDENT CORCORAN
TELEPHONE EXCHANGE.

Corcoran Telephone Exchange, a corporation, designated as one of the respondents in the above entitled proceedings and therein called the "Exchange", in answer to the amended complaint filed therein by the National Labor Relations Board, admits, denies, and alleges as follows:

1. Answering paragraph 1 of said amended complaint, this respondent admits that J. G. Boswell Company, one of the respondents named in the above

entitled proceeding and therein called the "Respondent", is, and at all times in said amended complaint mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of California. Except as to the matter thus admitted, this respondent alleges that it is without knowledge as to any of the matters alleged in said paragraph 1, and upon such lack of knowledge this respondent denies the allegations of said paragraph 1.

2. Answering paragraph 2 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 2 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 2.

3. Answering paragraph 3 of said amended complaint, this respondent admits that it is a corporation, organized under and existing by virtue of the laws of the State of California since the 29th day of November, 1922, and at all times therein mentioned, has engaged in, and now engages in the business of operating a telephone system and transmitting and receiving telephonic communications in the City of Corcoran, California, and Kings County, California.

Further answering said paragraph 3, this respondent admits that it owns and operates lines and cables which connect with lines and cables of the Pacific Telephone and Telegraph Company, but this respondent states that it is without knowledge

as to whether or not said Pacific Telephone and Telegraph Company is a subsidiary of the American Telephone and Telegraph Company, and upon such lack of knowledge this respondent denies the allegation that said Pacific Telephone and Telegraph Company is a subsidiary of the American Telephone and Telegraph Company.

Further answering said paragraph 3, this respondent admits that by and through such connections it transmits telephonic communications in interstate commerce, but in this regard this respondent alleges that no substantial amount or number of the telephonic communications handled or transmitted over its telephone system are transmitted in interstate commerce, and that the total number and amount of telephonic communications which are transmitted over its said telephone system in interstate commerce is considerably less than one per cent of the total number and amount of toll messages handled over or through its said system.

4. Answering paragraph 4 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 4 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 4.

5. Answering paragraph 5 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 5 of said amended complaint, and upon

such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 5.

6. Answering paragraph 6 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 6 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 6.

7. Answering paragraph 7 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 7 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 7.

8. Answering paragraph 8 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 8 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 8.

9. Answering paragraph 9 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 9 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 9.

10. Answering paragraph 10 of said amended

complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 10 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 10.

11. Answering paragraph 11 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 11 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 11.

12. Answering paragraph 12 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 12 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 12.

13. Answering paragraph 13 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 13 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 13.

14. Answering paragraph 14 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 14 of said amended complaint, and upon such lack of knowledge this respondent denies each

and every, all and singular, the allegations set forth and contained in said paragraph 14.

15. Answering paragraph 15 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 15 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 15.

16. Answering paragraph 16 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 16 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 16.

17. Answering paragraph 17 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 17 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 17.

18. Answering paragraph 18 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 18 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 18.

19. Answering paragraph 19 of said amended complaint, this respondent states that it is without

knowledge as to any of the matters alleged in said paragraph 19 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 19.

20. Answering paragraph 20 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 20 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 20.

21. Answering paragraph 21 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 21 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 21.

22. Answering paragraph 22 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 22 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 22.

23. Answering paragraph 23 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 23 of said amended complaint, and upon such lack of knowledge this respondent denies each

and every, all and singular, the allegations set forth and contained in said paragraph 23.

24. Answering paragraph 24 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 24.

Further answering said paragraph 24, this respondent alleges that the employment of said Margaret A. Dunn was terminated for good cause, and not for any of the reasons asserted in said paragraph of said amended complaint, and that neither the respondent J. G. Boswell Company nor the respondent Associated Farmers of Kings County, Inc., had anything whatsoever to do with the termination of the employment of said Margaret A. Dunn by this respondent.

25. Answering paragraph 25 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 25.

Further answering said paragraph 25, this respondent alleges that the employment of said Margaret A. Dunn was terminated for good cause and not for any of the reasons asserted in said paragraph of said amended complaint, and that the respondent Associated Farmers of Kings County, Inc. had nothing whatsoever to do with the termination of the employment of said Margaret A. Dunn by this respondent.

26. Answering paragraph 26 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the alle-

gations set forth and contained in said paragraph 26.

27. Answering paragraph 27 of said amended complaint, this respondent admits that on or about March 14, 1939 and thereafter, it refused to reinstate or to permit the reinstatement of Margaret A. Dunn to her regular position of employment with this respondent, but denies that the reason therefor was or is that said Margaret A. Dunn filed charges with the National Labor Relations Board, and, on the contrary, this respondent alleges that the sole and only reason for its refusal to reinstate said Margaret A. Dunn was that her employment had previously been terminated for good cause, and it was in no wise obligated to reinstate her.

Further answering said paragraph 27, this respondent denies specifically the allegation therein contained that it did engage in and/or is engaging in unfair labor practices within the meaning of Section 8, subdivision (4) of the Act, or at all.

Further answering said paragraph 27, this respondent alleges that neither the respondent J. G. Boswell Company nor the respondent Associated Farmers of Kings County, Inc. had anything whatsoever to do with the refusal of this respondent to reinstate said Margaret A. Dunn.

28. Answering paragraph 28 of said amended complaint, this respondent admits that on or about March 14, 1939, and thereafter, it refused to reinstate, or to permit the reinstatement of said Margaret A. Dunn to her regular position of employment with this respondent, but denies that the reason therefor was or is that said Margaret A. Dunn

filed charges with the National Labor Relations Board, and, on the contrary, this respondent alleges that the sole and only reason for its refusal to reinstate said Margaret A. Dunn was that her employment had previously been terminated for good cause, and it was in no wise obligated to reinstate her.

Further answering said paragraph 28, this respondent denies that the respondent Associated Farmers of Kings County, Inc. had anything whatsoever to do with the refusal of this respondent to reinstate said Margaret A. Dunn, and further denies that this respondent in refusing to reinstate or to permit the reinstatement of said Margaret A. Dunn was acting directly and/or indirectly in the interest of respondent J. G. Boswell Company.

Further answering said paragraph 28, this respondent denies specifically the allegation therein contained that it did engage in and/or is engaging in unfair labor practices within the meaning of Section 8, subdivision (4) of the Act, or at all.

29. Answering paragraph 29 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 29.

30. Answering paragraph 30 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 30.

31. Answering paragraph 31 of said amended complaint, this respondent denies each and every, all

and singular, generally and specifically, the allegations set forth and contained in said paragraph 31.

32. Answering paragraph 32 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 32 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 32.

33. Answering paragraph 33 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 33 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 33.

34. Answering paragraph 34 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 34.

35. Answering paragraph 35 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 35 of said amended complaint, and upon such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 35.

36. Answering paragraph 36 of said amended complaint, this respondent states that it is without knowledge as to any of the matters alleged in said paragraph 36 of said amended complaint, and upon

such lack of knowledge this respondent denies each and every, all and singular, the allegations set forth and contained in said paragraph 36.

37. Answering paragraph 37 of said amended complaint, this respondent denies each and every, all and singular, generally and specifically, the allegations set forth and contained in said paragraph 37.

Wherefore, said respondent Corcoran Telephone Exchange, a corporation, prays that the said amended complaint and the charges on file herein be dismissed as to said respondent.

CORCORAN TELEPHONE
EXCHANGE,

By C. H. GLENN,

President and Manager.

Subscribed and sworn to before me, this 15th day of May, 1939.

[Seal] HORACE LEMORE,

Notary Public in and for the
County of Kings, State of
California.

Due service and receipt of a copy of the foregoing Answer of Respondent Corcoran Telephone Exchange, is hereby acknowledged this 15th day of May, 1939.

SIDNEY J. W. SHARP,
M. WINGROVE,

Attorneys for J. G. Boswell
Company, one of the Re-
spondents above named.

[Title of Board and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Kings—ss.

Nellie Strain, being sworn, says that she is a citizen of the United States, over eighteen years of age, a resident of Kings County, and not a party to the within proceeding.

That affiant's business address is Room 22, Wealth Center Building, Hanford, California.

That on the 15th day of May 1939, affiant served the attached answer of respondent Corcoran Telephone Exchange upon each of the following named parties to the above entitled proceeding, to wit: Associated Farmers of Kings County, Inc., and Cotton Products and Grain Mill Workers' Union, Local No. 21798, AFL, by placing a copy of said answer in an envelope addressed to Webster V. Clark, the attorney of record for Associated Farmers of Kings County, Inc., one of the respondents in said proceeding, at the address of said attorney as follows:

WEBSTER V. CLARK,

Attorney at Law, 111 Sutter
Street, San Francisco, California.

and by placing a copy of said answer in an envelope addressed to E. F. Prior, business representative of Cotton Products and Grain Mill Workers' Union, Local No. 21798, AFL, one of the par-

ties to said proceeding, at the address of said business representative, as follows:

E. F. PRIOR,

Business Representative, 309
Broad Avenue, Wilmington,
California.

That each of said envelopes was then sealed and postage prepaid thereon, and on said 15th day of May 1939 each of said envelopes was deposited in the United States postoffice in Hanford, California; that there is delivery service by United States mail at the places so addressed and regular communication by United States mail between the place of mailing and the places so addressed.

NELLIE STRAIN.

Subscribed and sworn to before me this 15th day of May, 1939.

[Seal] HORACE LEMORE,

Notary Public in and for the
County of Kings, State of
California.

[Endorsed]: Filed 5/18/39.

Mr. Clark: Mr. Examiner, may I have permission, if it is in order, to ask counsel a question with respect to the Dunn charge which has just been admitted into evidence?

Trial Examiner Lindsay: Well, I don't believe those questions from counsel are necessary.

Mr. Clark: I would like to ask the Examiner if

ne is so advised, or leave the question in the record, as to whether or not the charge just admitted into evidence by Mrs. Margaret Dunn has been withdrawn by her.

Trial Examiner Lindsay: Well, I am not in a position to answer that question. The only fact, as I understand this matter, is that as a matter of form, to make the record complete, the original Dunn charge is kept on file, but that the complaint is based on the amended fourth charge. Is that right?

Mr. Mouritsen: That is correct.

Mr. Clark: Were it is simply a technicality, I *won't* be urging it, the objection. My information is that the Dunn charge was withdrawn. I fully realize that the consent of the original director is essential to a dismissal of the complaint on that ground, but I would like to know the fact. I am in no [35] position, don't you see, to ascertain it, and that is why I objected to simply the charge going into evidence, because I realized I wasn't in a position to develop the whole story should that be admitted; and I would like to be advised in that respect.

Trial Examiner Lindsay: It certainly isn't withdrawn because it is re-stated in your fourth amended charge, and the complaint is based on the fourth amended charge.

Mr. Clark: I understand, but re-stated by Mr. Prior, and not by Mrs. Dunn. That is the point.

Trial Examiner Lindsay: Board's Exhibit 2 has been received.

Now, you may proceed, Mr. Mouritsen. [36]

Mr. Mouritsen: I call Mr. Louis T. Robinson.

Mr. Examiner, before we proceed with the examination of this witness there are two other witnesses who have been subpoenaed by the Board. Now, in the presentation of the Board's case, I propose first to present the evidence that we have assembled relative to the J. G. Boswell Company, and then the evidence that has been gathered relative to the Employees' Association, which is, of course, part of the Boswell Company case; the case, then, against the Associated Farmers, and last, the case against the Corcoran Telephone Exchange.

These two witnesses who are now under subpoena are representatives of the Associated Farmers and of the Employees' Association. I think the most satisfactory procedure would be to release those people with the request that they hold themselves in readiness to appear on 24 hours' notice and we will then give counsel notice as to when they are to appear.

Mr. Clark: As far as my people are concerned, I assume you refer to Mr. Boyett of the Associated Farmers?

Mr. Mouritsen: Yes.

Mr. Clark: I will agree to produce him whenever wanted.

Trial Examiner Lindsay: Anything you agree to will be satisfactory with me.

Mr. Clark: You are going to be in town, aren't you, Mr. Boyett?

Mr. Boyett: Yes. [37]

Mr. Mouritsen: That will be the most satisfactory method, because we will have the record in order and the evidence respecting the particular parts of the case.

Trial Examiner Lindsay: However, if you want to listen to the proceeding, that doesn't mean you have to leave the court room.

Mr. Boyett: Thank you.

Mr. Mouritsen: Mr. Examiner, I understand that Mr. McKeever is appearing under the subpoena directed to the Employees' Association, so would the Examiner instruct him that he may leave now if he so desires with the understanding that he may be recalled under 24 hours' notice?

Trial Examiner Lindsay: Yes. Is that understood, Mr. McKeever?

Mr. McKeever: Yes, sir.

Trial Examiner Lindsay: You are under the direction of the subpoena, subject to being recalled at a later time.

LOUIS T. ROBINSON

called as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Where do you reside?

A. Corcoran.

Q. Do you have any street address? [38]

A. Whitely Avenue would be the nearest I can come to.

(Testimony of Louis T. Robinson.)

Q. What is your business or profession?

A. I am employed by the J. G. Boswell Company.

Q. How long have you been so employed?

A. About 14 years.

Q. What position do you now hold?

A. I am manager of the San Joaquin Valley operations.

Q. How long have you held that position?

A. Most of that time.

Q. Approximately 14 years?

A. Well, no. Approximately 10 years.

Q. And are you thoroughly acquainted with all of the operations of the respondent, J. G. Boswell Company, in the San Joaquin Valley?

A. I think so.

Q. Could you describe briefly what operations J. G. Boswell Company carries on under your administration or under your orders?

A. At Corcoran we carry on a cotton ginning business, a cottonseed oil mill business. We engage in farming, and we have cattle feed pens.

Mr. Clark: What was that last?

(The answer referred to was read by the reporter, as set forth above.)

The Witness (Continuing): At Tipton we engage in cotton [39] ginning.

Q. (By Mr. Mouritsen): Now, are any of these operations carried on that are not under your executive control?

(Testimony of Louis T. Robinson.)

A. The cattle feeding business is not under my control.

Q. Under whose control is that?

A. W. W. Boswell.

Q. And are you acquainted with the connection that he has with the J. G. Boswell Company?

A. Yes, I am.

Q. What connection does he have with the J. G. Boswell Company?

A. He is a director of the company and he is in charge of the cattle business.

Q. Are you a director of the company?

A. Yes, sir.

Q. How long have you held the directorship?

A. Several years, I would say three or four.

Q. During that time have you attended meetings of the Board of Directors?

A. Some meetings. I don't know that I attended all of them.

Q. And how many meetings, approximately, have you attended of the Board of Directors?

A. Oh, approximately 12.

Trial Examiner Lindsay: During what time?

The Witness: Covering a period of three or four years. [40]

Q. (By Mr. Mouritsen): Now, Mr. Robinson, under the subpoena you were directed to produce certain payroll records. Do you have those records with you? A. Yes, sir.

Q. Could I have them, please?

(Testimony of Louis T. Robinson.)

A. I turned them over to my attorney.

Mr. Clark: You might state what that is.

Mr. Wingrove: Yes.

This is the most easily accessible form of record we have. This is the original social security record of the company; and, of course, I am going to object very strenuously to the introduction of this record into evidence on the basis that it is our original record and must be retained in our office.

Trial Examiner Lindsay: Any document that is furnished which must be returned to the company, it is usually handled in this way: Either a photostatic copy or any other copy in any other form may be made, compared by all parties involved in this hearing, and if they are all satisfied the copy is a true and correct copy in every detail, then a copy may be substituted for the original; the original withdrawn from the record, and returned to its proper owner.

Does that cover it?

Mr. Clark: I was going to suggest this, Mr. Examiner, if [41] I may: As pursuant to the discussion I had with Mr. Wingrove yesterday, I am wondering whether counsel for the Board might use this record for the examination of this witness and read such portions of it as will be relevant; and then we can furnish photostatic copies of such that are relevant instead of encumbering the record.

Trial Examiner Lindsay: I wouldn't want to be in a position to advise the attorney on that.

Mr. Mouritsen: This is the course I propose to

(Testimony of Louis T. Robinson.)

follow: I would like to put these in evidence inasmuch as they are the original records, and then I would be happy to make any arrangements with counsel for their withdrawal, but since they are the original records and the best evidence, I prefer to have them in the record and then, of course, we can make arrangements regarding their withdrawal. I don't want to deprive the company of having them, but I propose to have them in the record.

Mr. Clark: It is a social security record——

Trial Examiner Lindsay (Interrupting): Off the record.

(Here followed discussion held outside the record.) [42]

Trial Examiner Lindsay: On the record.

Mr. Mouritsen: May the record that counsel has handed me in response to the subpoena be marked Board's 3 for identification?

(Thereupon the document above referred to was received and marked as Board's Exhibit No. 3 for identification.)

Q. (By Mr. Mouritsen): Now, Mr. Robinson, I show you the record that has been handed me by counsel, in response to the subpoena duces tecum, and ask if you have ever seen that record before.

A. (Examining document): Yes, sir.

Q. What does it contain?

A. That is the social security record of—the payroll of the employees.

(Testimony of Louis T. Robinson.)

Q. Now, in the subpoena duces tecum directed to yourself it is requested that you furnish the complete payroll records for all employees, exclusive of office, clerical, and supervisory employees, giving the date of initial employment, employed at the Corcoran plant of the company from November 1, 1938 to the date of this subpoena.

Will you indicate in Board's Exhibit 3 for identification just where this information is to be secured, from what pages, and the type of information.

A. The record is here in alphabetical order for each employee conforming to that order. [43]

Q. All right. Let us take the record of O. L. Farr, one of the persons named in the subpoena. Will you indicate for the record just where that information is set out in Board's Exhibit 3 for identification?

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Mr. Mouritsen: Let the record show that Board's Exhibit 3 for identification is a bound volume, the leaves of which are detachable, which has a grayish-brown cover of canvas upon which has been pasted a small white piece of paper bearing the words "Social Security Records Corcoran Payroll"; that it consists of——

Trial Examiner Lindsay (Interrupting): For what company?

Mr. Mouritsen: That is not indicated, Mr. Examiner, on the paper.

Mr. Clark: It is conceded by everyone that it is

(Testimony of Louis T. Robinson.)

for the J. G. Boswell Company, isn't that correct, counsel?

Mr. Wingrove: Yes, sir.

Mr. Clark: An official record of Boswell Company.

Mr. Mouritsen: And consists of a number of pages—I am unable to give the correct number inasmuch as the pages are not numbered consecutively.

Is that sufficient, Mr. Examiner, for the record?

Trial Examiner Lindsay: Yes. [44]

Q. (By Mr. Mouritsen): I believe the question pending was with regard to the record of O. L. Farr.

A. This is supposed to be in alphabetical order and I do not find it for Farr. If it is not in here, it is through error that it was left out, and we will secure that. Do you wish me to go clear through and see, or shall I—

Mr. Clark (Interrupting): May I suggest that you look on both sides of the "F" and if Farr does not appear in there, then take some other name and look up Farr later.

The Witness: I did just what you are doing here, and I couldn't find anything for his record.

Q. (By Mr. Mouritsen): Mr. O. L. Farr was employed by your company between the dates of November 1, 1938, and the date of the subpoena, was he not?

A. That is correct and evidently in taking out some that wasn't covered by the subpoena his name was taken out or it was out of alphabetical order.

(Testimony of Louis T. Robinson.)

If his name isn't in here, that record will be secured if you desire it.

Mr. Wingrove: Mr. Mouritsen, I think—if you will pardon me, I will make a statement.

It may be possible that—we just got that record in yesterday, I believe, or the day before, and we did not have much of an opportunity to go over the details. It may be entirely possible that that only covers the record of the employees who are at present with the company. I am not certain [45] of that, but if that proves to be the case, we will gladly produce the missing sheets for these missing parties.

Mr. Mouritsen: Very well. [46]

Q. Let us take the case or the page of Eugene Clark Ely?

A. (Examining document): Eugene Clark Ely.

Q. Now, Mr. Robinson, will you point out on the page to which you have turned, on which does not appear a number, but which appears to be in alphabetical order——

Mr. Clark: It has a Social Security number.

Q. (By Mr. Mouritsen): Which bears Social Security number of 557-10-2995, and indicate upon that page and the following pages, which are also Mr. Ely's record, the initial date of employment of Mr. Eugene Clark Ely?

A. The date employed is blank. Now, it may be that this is the date employed, but I wouldn't know that.

Q. The witness indicates upon the page the first

(Testimony of Louis T. Robinson.)

number 1 in the upper left-hand corner of the page, and what is that date opposite the figure 1 in the upper left-hand corner of the page, Mr. Robinson?

A. That appears to be 9 and 30, 1937.

Q. And what would your interpretation of "9" be?

A. September.

Q. All right.

Now, from that record can you ascertain whether or not between the date of September 30, 1937, and the date of the subpoena, Mr. Eugene Clark Ely had any lay-offs?

A. Well, that is just a matter of calculation. (Examining document). It appears he wasn't employed in April of 1938. [47]

Q. How do you reach that statement?

A. We have a payment for March 24th, and no more payments until May 5th.

Q. How do you know that the figure opposite the number "27" on about the middle of the left-hand side of the page, which is only "24", indicates the month of March?

A. Here you have a "3" indicating March.

Q. Opposite the figure 24 and about the middle of the page.

Mr. Clark: Those figures referred to, Mr. Examiner, are printed figures on the side of the page and not the date figures.

The Witness: He is being paid by the week, and it shows a payment for March 3, March 10, a payment for March 17, a payment for March 24, and then

(Testimony of Louis T. Robinson.)

he shows no more payments until April 5. The payment for March 24 shows that he only worked a small time during that week. These payments ordinarily are made——

Trial Examiner Lindsay (Interrupting): Now, just a minute. Off the record.

(Discussion outside the record.)

Q. (By Mr. Mouritsen): Now, are you able to ascertain from that record, Mr. Robinson, the rates of pay at which Mr. Ely was paid, referring to the hourly rate? A. I can only ascertain——

Mr. Clark (Interrupting): Just one minute. May I suggest, Mr. Examiner, by way of objection, that the question before the [48] witness be exhausted. The question was does the record before you show any lay-offs on the part of this particular worker, or employee, and the witness had pointed to one of them. I take it that that subject matter should, in proper order, be exhausted. Let us have the history of Mr. Ely as far as his lay-offs are concerned, so long as he was employed by the Company, instead of having to hop back to it.

Trial Examiner Lindsay: Well, I think the attorney may examine this witness according to his idea. He has his case prepared, I imagine.

(The record referred to was read by the reporter, as follows:

“Q. Now, are you able to ascertain from that record, Mr. Robinson, the rates of pay at

(Testimony of Louis T. Robinson.)

which Mr. Ely was paid, referring to the hourly rate?

“A. I can only ascertain——”)

The Witness (Continuing): The amount he received each week.

Q. (By Mr. Mouritsen): Does that record also contain any figures or information showing the number of hours that he worked?

A. I don't believe so.

Q. Is there maintained at the plant of the Company any record of the hours worked by an employee? A. Yes, sir. [49]

Q. Will you secure that information and bring it to the hearing so we can get the information called for in the subpoena?

A. On advice of my counsel, I will.

Mr. Clark: How about that, Mr. Wingrove?

Mr. Wingrove: Mr. Examiner and Mr. Mouritsen, I don't know just what records we have there, whether we have any records or not in the form of books. Of course, there is a regular weekly pay card, thousands of those, and they are all stored away in the back room, as I understand. It would be a tremendous job to produce those.

Q. (By Mr. Mouritsen): Let me ask, Mr. Robinson, isn't there some entry made from those books in a regular time book or is the original or payroll record made up directly from the time slips made out by the men?

A. To my belief, the time slips are carried to another book. [50]

(Testimony of Louis T. Robinson.)

(The record referred to was read by the reporter, as follows:

“Q. Will you obtain that book and bring it to the hearing?”)

The Witness: Shall I answer?

Trial Examiner Lindsay: Yes.

The Witness: On advice of my counsel, I will.

Mr. Mouritsen: Well, Mr. Wingrove?

Trial Examiner Lindsay: I think the attorney has consented to bring them.

Mr. Wingrove: I made the statement I would see what they have. I don't know what there is there, Mr. Examiner.

Trial Examiner Lindsay: Get what the subpoena calls for. Proceed.

Mr. Clark: That is what I was trying to find out.

Trial Examiner Lindsay: If there is anything else that is not covered by the subpoena and is needed, I hope that the respondents, through their counsel, will cooperate and let us proceed in a nice, orderly way.

Mr. Clark: You may rest assured of that. I might apologize to you, Mr. Examiner, for interjecting myself into it, but I knew that Mr. Wingrove had not committed himself to the extent to which counsel thought he had. I was trying to get a definition of it. [53]

Q. (By Mr. Mouritsen): Now, you have indicated the one lay-off or the first lay-off that you discovered in your examination of this document.

(Testimony of Louis T. Robinson.)

Will you please examine the document further and tell us whether there were any subsequent lay-offs indicated in this record. A. There were.

Q. After the first lay-off that you indicated, I believe as being between the months of March and May, in the year 1937, or '38——

A. (Interrupting): 1937—no, I am wrong—1938.

Q. 1938, are you able to find any—what is the first subsequent lay-off that you find?

A. There appears to have been a lay-off May 19th and July 7th of 1938.

Q. Now, will you examine the record further and see if there are any other lay-offs?

A. There appears to have been a further lay-off between July 21 and October 6, 1938.

Q. And what was the next lay-off?

A. There does not appear to have been any more lay-offs until the close of this record, which is February 2nd.

Q. Of what year? A. Of 1939.

Q. Now, what are your regular payroll intervals indicated in [54] this report? A. Weekly.

Q. And when does the week start and when does it end?

A. My understanding is that the week starts Friday morning and ends Thursday night.

Q. And when are the men paid?

A. The men are paid Saturday morning.

Q. Now, referring to the last week indicated by

(Testimony of Louis T. Robinson.)

the record, does that record indicate whether or not a full week was worked?

A. It indicates that it was not.

Q. Are you able to state from your examination of the record approximately how many days were worked by Eugene Clark Ely during that last?

A. I know I am not able to state.

Q. Now, from your examination of this record, are you able to indicate the type of work that Mr. Eugene Clark Ely did during the period covered by this record?

A. No, sir.

Q. Is a record kept of such, of the types of work done by Mr. Eugene Clark Ely during the period of his employment by the company.

A. I believe a record is kept of the type of work done by each individual.

Q. Will you obtain and bring to the hearing that record which [55] shows the types of work done by the men listed in section 2 of the list attached to the subpoena duces tecum and directed to you?

A. On advice of my counsel, I will.

Q. Now, other than information that you are required to furnish to the Social Security Board, does this record contain any additional information relative to either the type of work or the rate of payment or the amounts paid and the periods worked by Mr. Eugene Clark Ely?

A. It appears only to show the period worked by the week and the amount of money received by the week.

(Testimony of Louis T. Robinson.)

Q. Now, have you examined the record, that is, Board's Exhibit 3 for identification, to determine whether or not other than the name of O. L. Farr it contains the names of all of the men contained in section 2 of the subpoena duces tecum directed to yourself?

A. No, I haven't. This came in within the last day or so and I picked out some names at random and they were all there so I assumed that the rest of them were.

Mr. Clark: Let us check them now so we won't have to look further for the records; we will only have to limit ourselves to the specific things you have asked for.

Mr. Mouritsen: I think that perhaps doing that during the recess will be better and we can continue with Mr. Robinson at this time. [56]

Q. Then, with respect to the request of sections 1 and 2 of the subpoena duces tecum, they are not satisfied inasmuch as the types of work done by these men listed in paragraph 2 are not set out and the rates of pay for the specific payroll periods are not met, and those are the things that I am requesting Mr. Robinson and Mr. Wingrove to furnish in order to satisfy the subpoena, and I will be happy to discuss that with you, Mr. Wingrove, during one of our recesses.

Now, does Board's Exhibit 3 for identification contain or purport to contain the information relative to all other employees of the J. G. Boswell Company between the period November 1, 1928, and the date of

(Testimony of Louis T. Robinson.)

the subpoena which you have indicated contains relative to Eugene Clark Ely?

A. Yes, sir, that is for the Corcoran plant, as I understand it.

Q. Yes, just for the Corcoran plant, and there are no names of Tipton employees contained in this Board's 3 for identification?

A. Not to the best of my knowledge and belief, but I haven't examined it too closely.

Mr. Mouritsen: Very well. At this time, Mr. Examiner, I offer Board's 3 for identification.

Trial Examiner Lindsay: Any objection?

Mr. Clark: Only the one stated which your Honor has disposed of; no objection to the use of it. [57]

Trial Examiner Lindsay: It may be received in evidence with the understanding that a copy will be made in some form and at that time compared with the original and if it is correct, then a substitution may be made and the original returned to counsel representing respondent.

Mr. Clark: And in view of the omission of that one name, I take it that exhibit is admitted subject to correction and that we will run through it at a recess, as Mr. Mouritsen doesn't want to take the time now to see that all these names are in here.

Trial Examiner Lindsay: Yes, that is right.

Mr. Mouritsen: That is satisfactory.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 3.)



COMPENSATION RECORD

CHARLES B. HADLEY CO., PATENT FINDERS, INC.

100, 200, 300, 400, 500, 600, 700, 800, 900, 1000

STANDARD FORM C38

PRINTED IN U.S.A.

NAME

R. K. Martin
Concoran, Calif.

ADDRESS

CHANGE

DATE

OF BIRTH

6-8-08

PLACE
OF BIRTH

Ga.

DATE

9-4-34

EMPLOYED

EMPLOYMENT CONTRACT

MADE IN STATE OF

OCCUPATION

RATE \$
WORK DONE
IN STATE OF

Calif.

COMPANY
EMPLOYEE NO.

14

46 04 16

AGE

DATE

MALE X FEMALE
BECOME 1973

STEADY

TEMPORARY

WORK DONE

IN DISTRICT

Concoran

LINE

NO.

DATE

PERIOD

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COMPENSATION RECORD

CHARLES HADLEY © PATENTED 1933 BY THE STANDARD FORM CO. PRINTED IN U.S.A.

NAME

ADDRESS

CHANGE

DATE

OF BIRTH

DATE

EMPLOYED

EMPLOYMENT CONTRACT

MADE IN STATE OF

*Frederick Matthews
Cocoran*

5-6-10 PLACE *Greensboro, Ga*

5-13-38 OCCUPATION

RATE \$
WORK DONE
IN STATE OF

COMPANY
EMPLOYEE

AGE *28* SEX *M* HEIGHT *5'11"* WEIGHT *175*

PAY-ROLL RECORD

LINE NO.	DATE PERIOD ENDS	WORKED			TIME LOST			SALARY OR WAGES		OTHER COMPENSATION		ALLOWANCE OR DEDUCTION		TOTAL TAXABLE EARNINGS	UNEMP. INS.	
		DAYS	HRS.	TIME	WHT	REF.	AMOUNT	REF.	AMOUNT	REF.	AMOUNT	REF.	WEEKLY		MONTHLY	
1	5-19						1330							13	13	
2	26						735							07	07	
3	6-2						1155							11	11	
4	9						1085							10	10	
5	16						210							02	02	
6	23						1505							15	15	
7	30						2310							23	23	
8	7-7						2170							21	21	
9	14						2310							23	23	
10	21						2310							23	23	
11	28						1330							13	13	
12	8-4						2310							23	23	
13	11						2695							27	27	
14	18						2310							23	23	
15	25						945							09	09	
16	7-8						385							04	04	
17	15						2450							24	24	
18	22						2310							23	23	
19	29						2310							23	23	
20	10-6						2310							23	23	
21	13						2310							23	23	
22	20						1310							13	13	
23	27						2170							21	21	
24	11-3						2310							23	23	
25	10						2310							23	23	
26	17						2310							23	23	
27	24						2310							23	23	
28	12-1						2310							23	23	
29	8						1925							19	19	
30	15						2170							21	21	
31	22						1560							15	15	
32	29						1000							10	10	
33	31						3200							32	32	
34	7-7 1934						800							08	08	
35	14						2800							28	28	
36	21						2400							24	24	
37	28						1600							16	16	
38	2-2						2400							24	24	
39	9						2120							21	21	
40	16						1200							12	12	
41	23						2360							24	24	
42	3-4						2360							24	24	
43	11						2000							20	20	
44	18						2400							24	24	
45	25						2200							22	22	
46	31						1400							14	14	
47	4-8						1600							16	16	
48	15						2000							20	20	
49	22						1600							16	16	
50	29						2400							24	24	
51	5-6						3120							31	31	

DATE

NAME

ADDRESS

CITY

STATE

ZIP

DATE

NAME

ADDRESS

CITY

STATE

ZIP

TERMINATION OF EMPLOYMENT

DATE

REASON:

INELIGIBLE FOR UNEMPLOYMENT COMPENSATION

REASON:

RECOMMENDATION FOR REEMPLOYMENT

DATE OF FILING

REGISTERED

PUBLIC EMPLOYMENT OFFICE

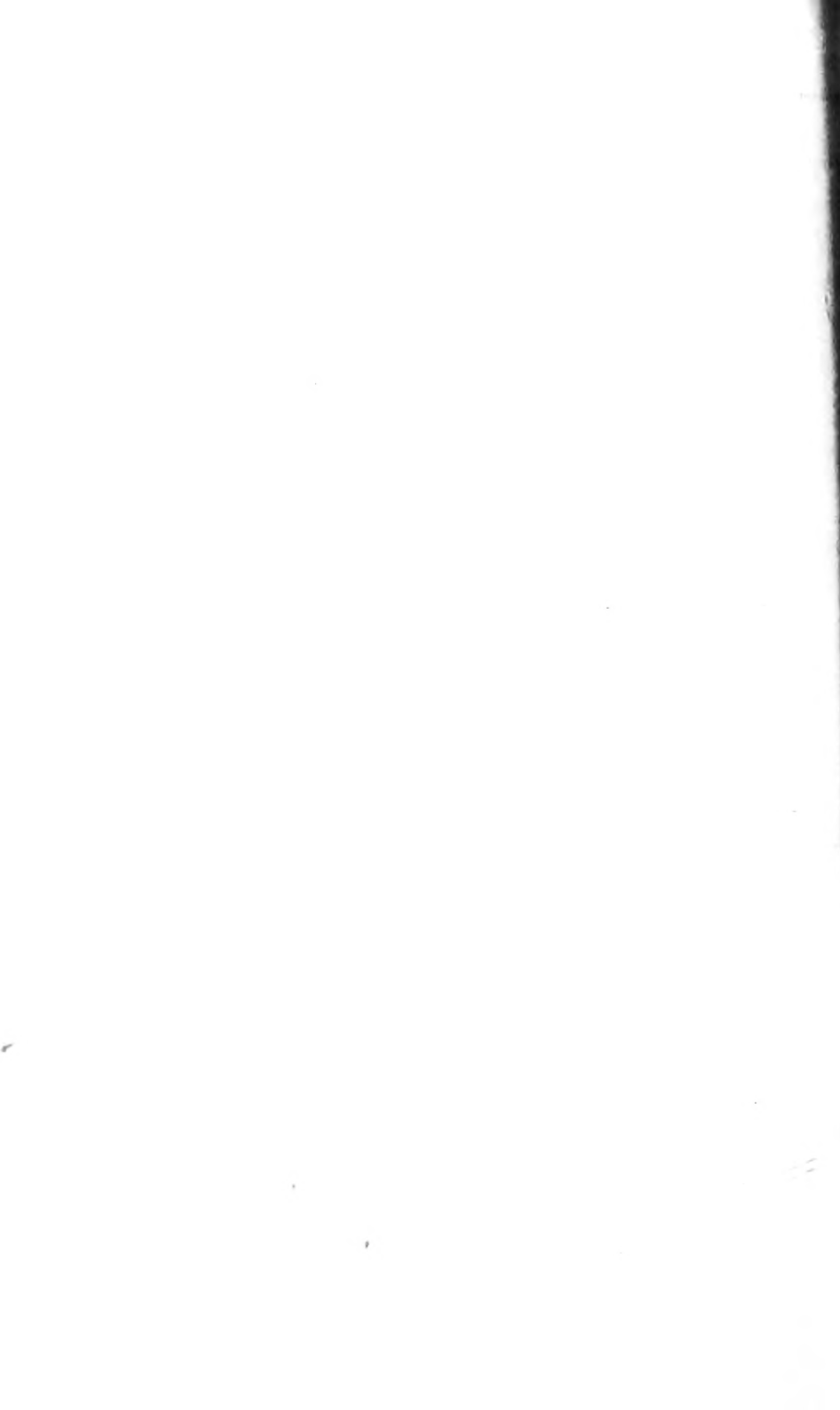
DISTRICT

CERTIF. DATE

NUMBER

MEMO.

TOTAL EARNINGS	UNEMP. INS.	TOTAL EARNINGS
1ST QUARTER		
2ND QUARTER		
3RD QUARTER		
4TH QUARTER		
TOTALS		
SUMMARY		
TOTAL EARNINGS		
NO. OF WEEKS WORKED		
AVG. WEEKLY WAGE		
TOTAL HOURS WORKED		
AVERAGE WEEKLY HOURLY RATE EARNED		
UNEMPLOY. INS. TAX DEDUCTED		
FED. OLD AGE TAX DEDUCTED		



COMPENSATION RECORD

CHARLES RADLEY CO. PATENTED

STANDARD FORM 638 PRINTED IN U.S.A.

COMPANY
EMPLOYEE NO.

NAME

ADDRESS

CHANGE

DATE

OF BIRTH

DATE

EMPLOYED

MADE IN STATE OF

9-23-10 PLACE
OF BIRTH Miss.
TYPE
OF WORK
EMPLOYMENT CONTRACT

Miss.

RATE B
WORK DONE
IN STATE OF

Calif.

DATE
BECOMES SS 1/1/11
STEADY ☐ TEMPORARY ☐
WORK DONE
IN DISTRICT

DEDUCTIONS

DATE PERIOD ENDS W T F S

WHY EXEMPT
UNEMPLOYMENT COMPENSATION
WHY EXEMPT
UNEMPLOYMENT COMPENSATION
WHY EXEMPT
UNEMPLOYMENT COMPENSATION
WHY EXEMPT
UNEMPLOYMENT COMPENSATION

IN CASE OF ACCIDENT NOTIFY
NAME
ADDRESS

PHONE
RELATIONSHIP

RATE CHANGES

DATE	TYPE OF WORK	Rate Per	U.S. By

TERMINATION OF EMPLOYMENT

DATE
REASON
INELIGIBLE FOR UNEMPLOY COMPENSATION ☐
REASON

RECOMMENDED FOR RE-EMPLOYMENT YES-NO
DATE RE-EMPLOYED
REGISTERED WITH
PUBLIC EMPLOYMENT OFFICE

DISTRICT
CERTIFICATE
NUMBER
MEMO

FED OLD AGE	TAXABLE EARNINGS	DEDUCTED
1ST QUARTER		
2ND QUARTER		
3RD QUARTER		
4TH QUARTER		
TOTAL		
SUMMARY	CURRENT YR	PRIOR YEARS
TOTAL EARNINGS		
NO OF WEEKS		
WORKED		
AVERAGE WEEKLY		
WAGE		
TOTAL		
HOURS WORKED		
AVERAGE		
WEEKLY HOURS		
HOURLY		
RATE EARNED		
UNEMPLOY INS		
TAX DEDUCTED		
FED OLD AGE		
TAX DEDUCTED		

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[illegible]

COMPANY
EMPLOYEES

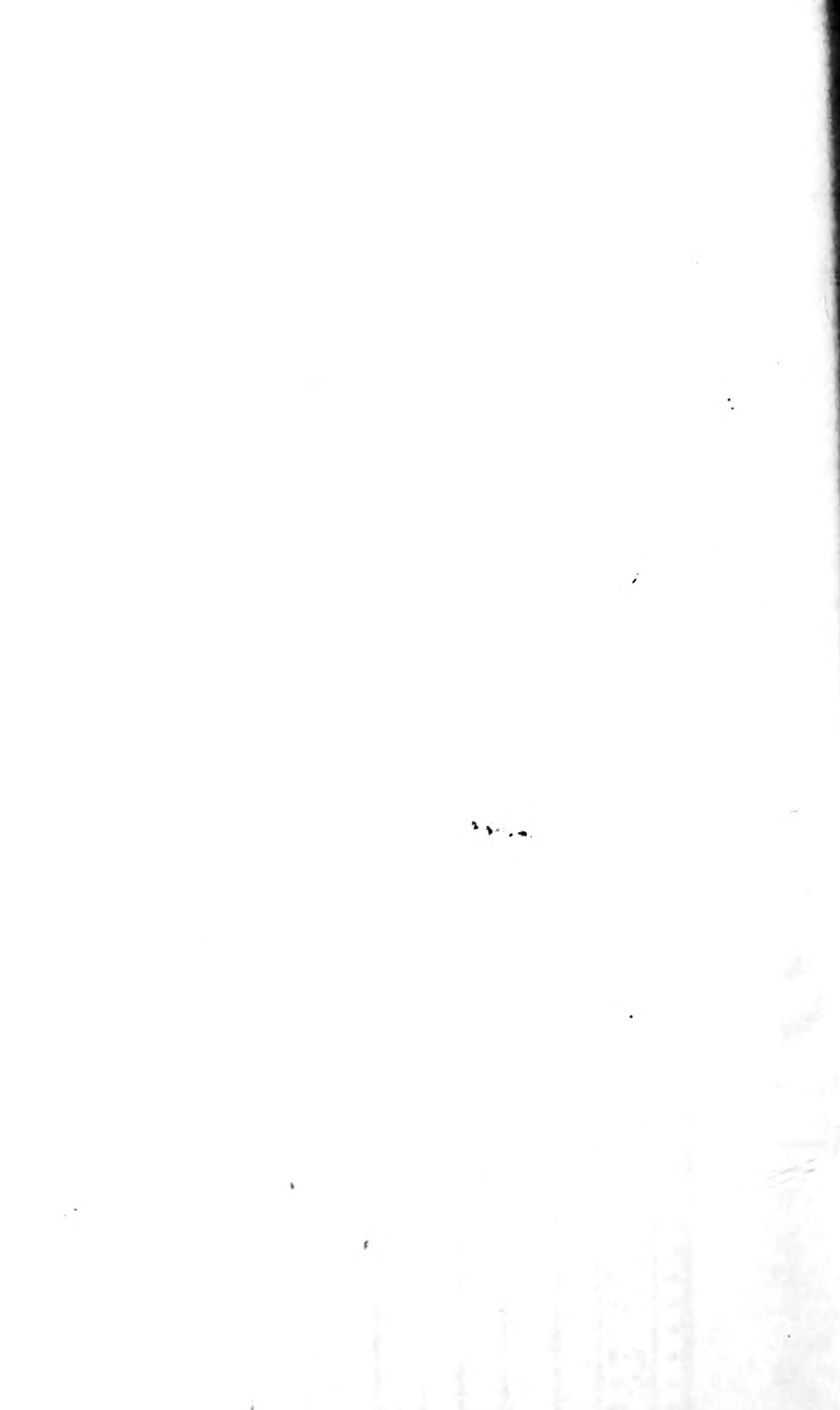
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1965

TOTAL TAXABLE EARNINGS	UNEMPLOYMENT TAX	
------------------------	------------------	--

[illegible][illegible]

* USE APPROPRIATE SYMBOLS TO DESIGNATE TIME LOST



NAME Evan T. Powell
ADDRESS Lakeview Hotel, Corcoran Calif.

She 13

EMPLOYEE S. S. ACCT NO. 557-03-3793

EMPLOYEE S. S. ACCT NO. 557-03-3793

DATE EMPLOYED 8/23/36

RATE \$

PER

FULL TIME WEEKLY HOURS

FULL TIME EARNINGS \$

ATBAY TEMPORARY FULL TIME PAST TIME

PAY-ROLL RECORD

DEDUCTIONS

TAX STATUS

IS THIS EMPLOYMENT EXEMPT FROM

STATE U I REASON

FED U I REASON

FED O A REASON

DATE OF BIRTH 12/23/00

PLACE OF BIRTH Georgia

AGE DATE BECAME SA 1985

EMPLOYMENT CONTRACT MADE IN STATE OF

WORK DONE IN STATE OF

PLACE OF EMPLOYMENT

IN CASE OF ACCIDENT NOTIFY

NAME Mrs E. C. Powell

ADDRESS Lakeview Hotel

Corcoran Calif.

PHONE

RELATIONSHIP Wife.

RATE CHANGES

DATE TYPE OF WORK RATE PER

DATE RE-EMPLOYED

RECOMMENDED FOR RE-EMPLOYMENT YES NO

DATE UNEMPLOYMENT COMPENSATION BEGAN

AMOUNT PER WEEK CHARGEABLE TO OUR ACCOUNT \$

ADDITIONAL MEMOS ON REVERSE

TAXABLE EARNINGS

UNEMP INS MONEY OTHER

1ST PERIOD REGULAR

SPECIAL

2ND PERIOD REGULAR

SPECIAL

3RD PERIOD REGULAR

SPECIAL

4TH PERIOD REGULAR

SPECIAL

TOTALS

OLD-AGE ANNTY PERIOD TO-DATE

1ST PERIOD

2ND PERIOD

3RD PERIOD

4TH PERIOD

THIS AMOUNT WILL NOT EXCEED \$5000.00

REG. U. S. PAT. OFF.

CHASLER & SONS CO. PRINTERS

USE APPROPRIATE SYMBOLS TO DESIGNATE REASONS FOR TIME LOST

COMPENSATION RECORD

STANDARD FORM 686W PRINTED IN U.S.A.



COMPENSATION RECORD

CHARLES WADSWORTH PATRICKS

STANDARD FORM 638

PRINTED IN U.S.A.

REG. U.S. MAIL 7-12-61 7244

NAME *W. R. Johnston*
 ADDRESS *Corcoran Calif - Box 2*
 CHANGE
 DATE
 OF BIRTH *10-23-13* PLACE *Colman Tex*
 DATE
 EMPLOYED *9-23* OCCUPATION
 EMPLOYMENT CONTRACT
 MADE IN STATE OF

COMPANY
EMPLOYEE NO.

PHONE

MALE ☒ FEMALE ☐ MARRIED ☐

FED. UNEMP. INS.

AGE *23* BECAME 65 *1978*

FULL PART

IN STATE

IN DISTRICT

FULL TIME

WEEKLY HOURS

RATE \$
WORK DONE
IN STATE OF

PAY-ROLL RECORD

TOTAL
TAXABLE
EARNINGS

DEDUCTIONS

TAX STATUS

LINE NO.	DATE PERIOD ENDS	WORKED		TIME LOST		SALARY OR WAGES		OTHER COMPENSATION		ALLOWANCES OR EXPENSES		TOTAL TAXABLE EARNINGS	DEDUCTIONS		TAX STATUS
		DAYS	HRS.	TIME	* WAT	REF.	AMOUNT	REF.	AMOUNT	REF.	AMOUNT		UNEMP. INS.	OLD AGE ANNUITY	
1	9-23						245		245			02	02	02	2
2	30						245		245			02	02	02	2
3	10-7						2370					25	25	26	2
4	14						2403					26	26	27	2
5	21						2675					24	24	27	2
6	28						3080		1127			28	28	31	113
7	11-4						2870					26	26	29	2
8	11						2675					24	24	27	2
9	18						2675					24	24	27	2
10	25						2660		22190			24	24	27	223
11	12-2						3010					27	27	30	2
12	9						3115					28	28	31	2
13	16						2275					20	20	23	2
14	23						2675					24	24	27	2
15	25						1000					09	09	10	2
16	31						2580		36665			21	21	24	2
17	1-28														
18	1-6						1870					19	19	19	2
19	14						2310					23	23	23	2
20	20						2340					23	23	23	2
21	27						2600					27	27	27	2
22	2-3						385		9590			02	02	04	2
23	10-27						1575					16	16	16	2
24	11-3						2100					21	21	21	2
25	10						2520					25	25	25	2
26	17						2415		2612			24	24	24	2
27															
28															
29															
30															
31															
32															
33															
34															
35															
36															
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41															
42															
43															
44															
45															
46															
47															
48															
49															
50															
51															
52															
53															

* USE APPROPRIATE SYMBOLS TO DESIGNATE TIME LOST.



COMPENSATION RECORD

CHARLES HADLEY CO. PRINTED IN U.S.A.

FILE NO. 548 004300

STANDARD FORM C38

NAME

John Watson

COMPANY
EMPLOYEE NO.

PHONE

ADDRESS

CHANGE

DATE

OF BIRTH

DATE

EMPLOYED

EMPLOYMENT CONTRACT

MADE IN STATE OF

PLACE
OF BIRTH

OCCUPATION

RATE \$
WORK DONE
IN DISTRICT

AGE
BECOMES 65

STEADY ☐ TEMPORARY ☐
WORK DONE
IN DISTRICT

MALE ☐ FEMALE ☐
MARRIED ☐ SINGLE ☐
YEARS

FULL ☐ PART ☐
TIME

LINE NO.	DATE PERIOD ENDS	WORKED				TIME LOST				PAY-ROLL RECORD						TOTAL TAXABLE EARNINGS	DEDUCTIONS				TAX STATUS
		DAYS	HRS.	TIME	HRS.	SALARY OR WAGES		OTHER COMPENSATION		ALL WANCES OR EXPENSES		UNEMP. INS.	OLD AGE ANNUITY								
						REP.	AMOUNT	REP.	AMOUNT	REP.	AMOUNT		REP.	%	%						
1	5-5						1.00										18	18			
2	12						1.00										21	21			
3	19						2.00										21	21			
4	26						2.00				75						21	21			
5	6-2						2.00										21	21			
6	9						2.00										21	21			
7	16						2.00										21	21			
8	30						2.00				1.00						21	21			
9	7-7						2.00										21	21			
10	12						2.00										21	21			
11	21						2.00										21	21			
12	28						2.00				84.00						21	21			
13	8-4						2.00										21	21			
14	11						6.00										06	06			
15	25						4.00				14.00						42	42			
16	9-1						2.00										21	21			
17	5						4.00										42	42			
18	22						2.00										21	21			
19	29						2.00				253.00						21	21			
20	10-6						2.00										21	21			
21	13						2.00										21	21			
22	20						2.00										21	21			
23	27						2.00				60.00						21	21			
24	11-3						2.00										21	21			
25	10						2.00										21	21			
26	17						2.00				12.00						21	21			
27	12-7						4.00										42	42			
28	8						9.00										09	09			
29	15						12.00										12	12			
30	22						12.00										12	12			
31	25						2.00										-	-			
32	31						12.00				262.00						12	12			
33	1-7 1939						12.00										12	12			
34	14						18.00										18	18			
35	21						16.50										17	17			
36	28						15.00				61.50						15	15			
37	2-2						7.00										09	09			
38	9						10.50										11	11			
39	16						15.00										15	15			
40	23						18.00				14.00						18	18			
41	3-4						18.00										18	18			
42	11						15.00										15	15			
43	18						16.50										17	17			
44	25						6.00										06	06			
45	31						9.00				175.00						09	09			
46	4-8						18.00				18.00						18	18			

TAX STATUS

WHY EXEMPT?
UNEMPLOYMENT INSURANCE
WHY EXEMPT?
SUBJECT TO OLD AGE ANNUITY
WHY EXEMPT?

IN CASE OF ACCIDENT NOTIFY

NAME

ADDRESS

PHONE

RELATIONSHIP

RATE CHANGES

DATE	TYPE OF WORK	Rate Per	OK'd By

TERMINATION OF EMPLOYMENT

DATE
REASON:
INELIGIBLE FOR UNEMPLOYMENT COMPENSATION ☐
REASON:

RECOMMENDED FOR RE-EMPLOYMENT: YES-NO.
DATE RE-EMPLOYED

REGISTERED WITH PUBLIC EMPLOYMENT OFFICE

DISTRICT CERTIFICATE NUMBER

MEMO.

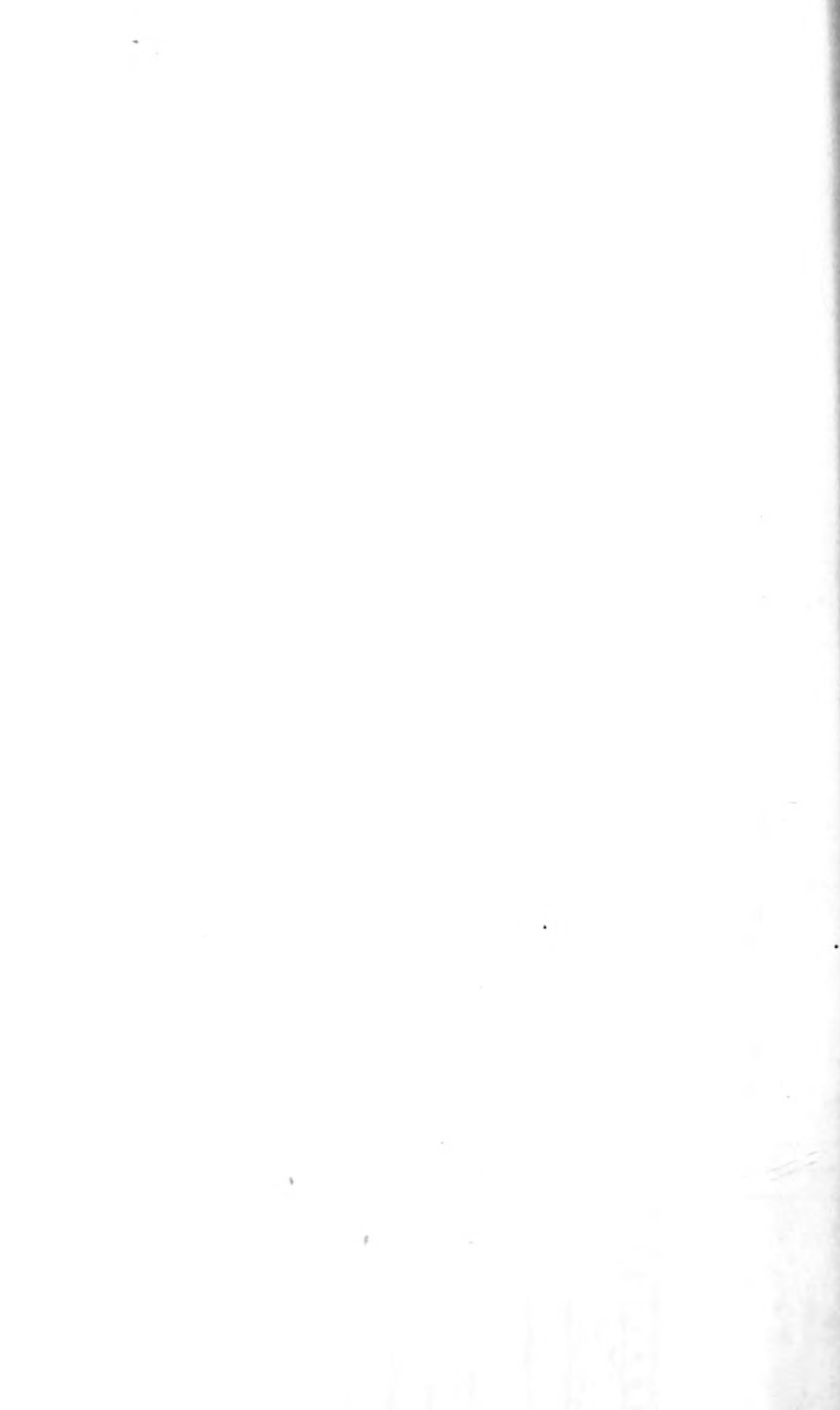
TOTAL EARNINGS YES UNEMP. INS. OLD AGE ANNUITY

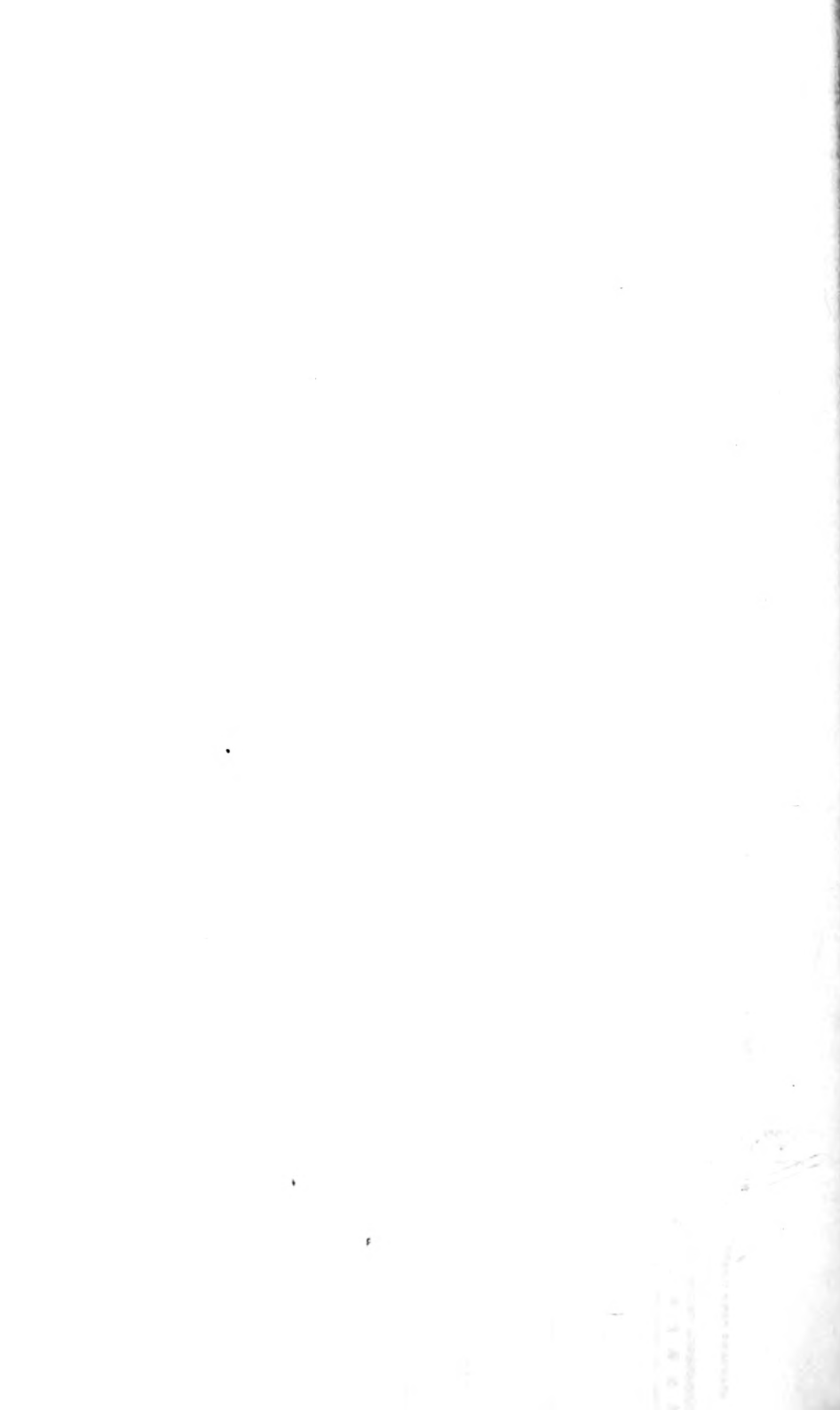
1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	TOTALS

SUMMARY CURRENT YR PRIOR YEARS

TOTAL EARNINGS
NO. OF WEEKS WORKED
AVERAGE WEEKLY WAGE
TOTAL HOURS WORKED
AVERAGE WEEKLY HOURLY RATE EARNED

UNEMPLOYMENT INS. TAX DEDUCTED
FED. OLD AGE TAX DEDUCTED





NAME James Gilmore

Sheet 12

EMPLOYEE S. S. ACCT NO 546-09-2663

COMPANY KNO

ADDRESS

CHANGE

DATE EMPLOYED

1928

OCCUPATION

DATE

PER

FULL TIME WEEKLY HOURS

FULL TIME EARNINGS \$

STEADY TEMPORARY

FULL TIME PART TIME

DATE PERIOD PAID

38

TIME WORKED

TIME LOST

PAY-ROLL RECORD

SALARY OR WAGES

REF AMOUNT REF AMOUNT

TOTAL EARNINGS

DEDUCTIONS

DREFF

OLD-AGE

ANNTY

TAX STATE

IS THIS EMPLOYMENT EXEMPT FROM

STATE U I REASON
FED U I REASON
FED O A REASONDATE OF BIRTH 5/10/95
PLACE OF BIRTH Tempson Texas

AGE DATE RECORDED 1960

EMPLOYMENT CONTRACT MADE IN STATE OF
WORK DONE IN STATE OF
PLACE OF EMPLOYMENT

IN CASE OF ACCIDENT NOTIFY

NAME L. Gilmore
ADDRESS Corcoran, Calif.

PHONE

RELATIONSHIP Daughter

RATE CHANGES

DATE	TYPE OF WORK	RATE PER	DEDT BY

TERMINATION OF EMPLOYMENT

DATE

REASON:

RECOMMENDED FOR RE-EMPLOYMENT. YES ☐ NO ☐

DATE RE-EMPLOYED

DATE UNEMPLOYMENT COMPENSATION BEGAN

AMOUNT PER WEEK CHARGEABLE TO OUR ACCOUNT \$

ADDITIONAL MEMOS ON REVERSE ☐

TAXABLE EARNINGS

UNEMP. IMS.	MONEY	OTHER
1ST PERIOD REGULAR		
SPECIAL		
2ND PERIOD REGULAR		
SPECIAL		
3RD PERIOD REGULAR		
SPECIAL		
4TH PERIOD REGULAR		
SPECIAL		
TOTALS		
OLD-AGE ANNTY	PERIOD	TO-DATE †
1ST PERIOD		
2ND PERIOD		
3RD PERIOD		
4TH PERIOD		

† THIS AMOUNT WILL NOT EXCEED \$3000.00

COMPENSATION RECORD

STANDARD FORM 65W PRINTED IN U.S.A. CHARLES HADLEY CO. FARMINGDALE, N.Y. 11735. USE APPROPRIATE SYMBOLS TO DESIGNATE REASONS FOR TIME LOST

REG. U. S. PAT. OFF.



COMPENSATION RECORD

STANDARD FORM 68W PRINTED IN U.S.A. CHARLES HOLT CO. PATENTED 1958. U.S. GOVERNMENT PRINTING OFFICE: 1958. 16-70881-1

REG. U. S. PAT. OFF.

NAME
ADDRESS
ADDRESS
CHANGE
DATE
EMPLOYED

DATE
PAID
PERIOD
19 39 18

TIME
WORKED
DATE
HOURS

TIME
LOST
DATE
HOURS

SALARY OR WAGES
REF AMOUNT REF AMOUNT REF AMOUNT

PAY-ROLL RECORD

RATE \$

PER

FULL TIME
WEEKLY HOURS

FULL TIME
WEEKLY HOURS

FULL TIME
WEEKLY HOURS

FULL TIME
WEEKLY HOURS

FULL TIME
WEEKLY HOURS

FULL TIME
WEEKLY HOURS

TOTAL
EARNINGS

UNEMP
INS

DEDUCTIONS
UNEMP
INS

DEDUCTIONS
UNEMP
INS

DEDUCTIONS
UNEMP
INS

DEDUCTIONS
UNEMP
INS

DEDUCTIONS
UNEMP
INS

TAX STATUS
STATE
U. I.
FED
U.
FED
O. A.

DATE
OF BIRTH
PLACE
OF BIRTH

AGE
DATE
RECEIVED
EMPLOYMENT CONTRACT
MADE IN STATE OF
WORK DONE IN
STATE OF
PLACE OF
EMPLOYMENT

IN CASE OF ACCIDENT NOTIFY

NAME

ADDRESS

PHONE

RELATIONSHIP

RATE CHANGES

DATE TYPE OF WORK RATE PER DEBY

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

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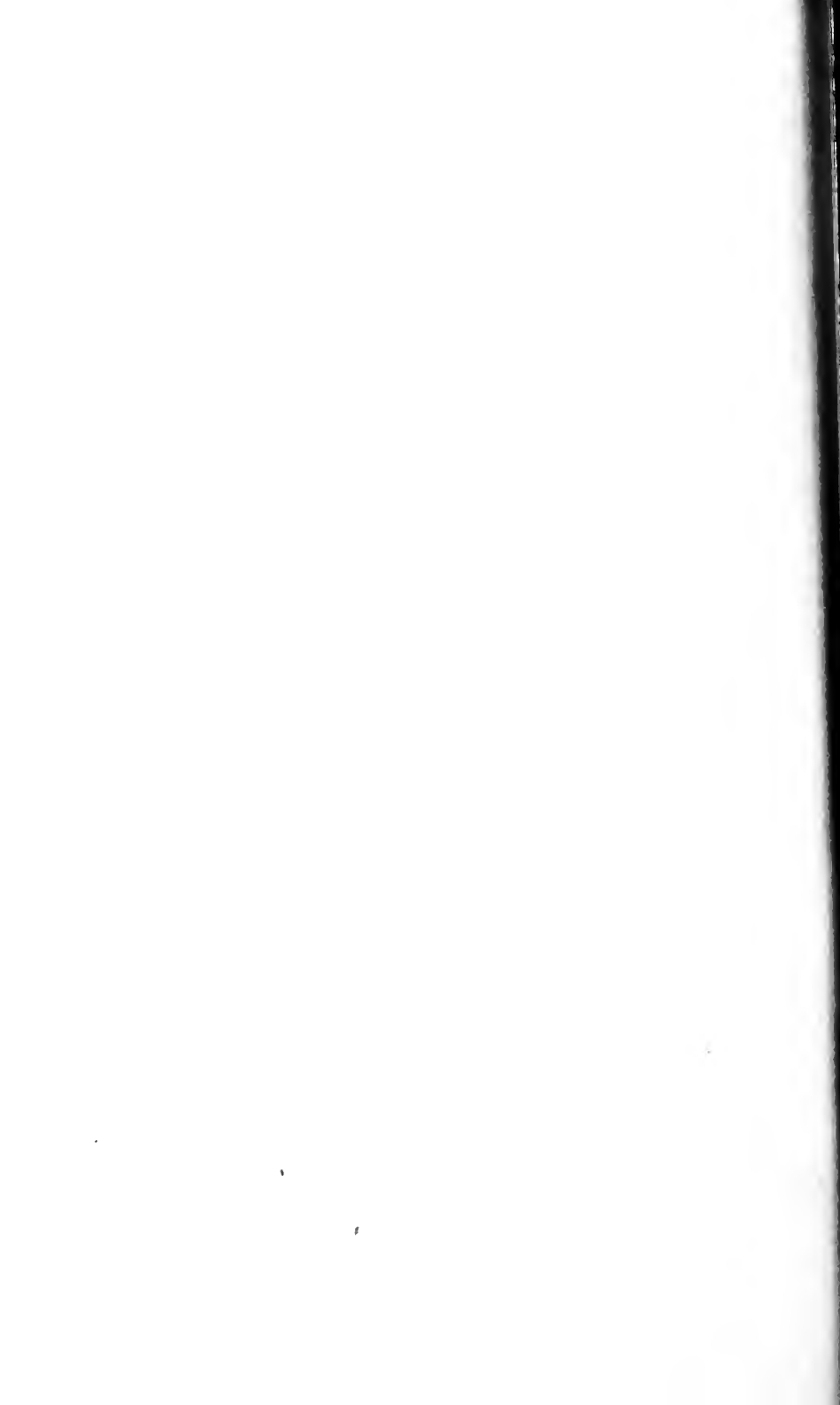
DATE

DATE

DATE

DATE

DATE



NAME **M. Escobedo**
ADDRESS **Corcoran Calif.**
DATE EMPLOYED **1/9/36**

Sheet 1

EMPLOYEE S. S. ACCT. NO. **546-09-2673**

DEPT OR PLACE OF WORK
MALE ☒ FEMALE ☐ MARRIED ☒ SINGLE ☐ COLOR

INC. IN P.

DEPENDENT 5
TRADE TEMPORARY
FULL TIME PERMANENT

STANDARD FORM 680W PRINTED IN U.S.A.
CHARLES MASLEY CO. PATENTED IN U.S. 2,100,000
USE APPROPRIATE SYMBOLS TO DESIGNATE REASONS FOR TIME LOST

COMPENSATION RECORD

REG. U. S. PAT. OFF.

DATE	PERIOD END	PAID	TIME WORKED	TIME LOST	OCCUPATION	PAY-ROLL RECORD			TOTAL EARNINGS	DEDUCTIONS			
						SEP	AMOUNT	SEP		UNEMP INS	OLD AGE ANNTY	STATE	TAX
1	6	38					2320			25	25		
2	14						3150			32	32		
3	20						2940			29	29		
4	27						2730			27	27		
5	23						2940			29	29		
6	10						2830			28	28		
7	17						840			08	08		
8	24						2730	2165		27	27		
9	33						2940			29	29		
10	10						3150			32	32		
11	17						420	22175		04	04		
12	5						1680			17	17		
13	12						2940			29	29		
14	19						1890	851		19	19		
15	7						2940			29	29		
16	14						2940			29	29		
17	21						2730			27	27		
18	28						1260	951		13	13		
19	4						2940			29	29		
20	11						2940			29	29		
21	18						2730			27	27		
22	25						2940			29	29		
23	1						3150			32	32		
24	8						2520			25	25		
25	15						2310			23	23		
26	22						2520			25	25		
27	29						2310	30130		23	23		
28	10	27					1920			19	19		
29	11	3					3360			34	34		
30	10						3600			36	36		
31	17						1920	122		19	19		
32	7	1939					480			05	05		
33	14						3360	5846		34	34		
34	23						1440	528		14	14		
35	31						960			10	10		
36	7						1440			14	14		
37	18						1200			12	12		
38	25						800	4650		08	08		
39	6						1920			19	19		

TAX STATUS
IS THIS EMPLOYMENT EXEMPT FROM
STATE TAX
FED U I REASON
FED U I REASON
FED O A REASON
DATE OF BIRTH **5/26/06**
PLACE OF BIRTH **Calereia, Mexico**
AGE DATE BECAME 22 **1971**
EMPLOYMENT CONTRACT MADE IN STATE OF
WORK DONE IN STATE OF
PLACE OF EMPLOYMENT
IN CASE OF ACCIDENT NOTIFY
NAME **Mrs. Soledad Escobedo**
ADDRESS **Boswell Ranch Camp Corcoran Calif.**
PHONE
RELATIONSHIP **Wife**
RATE CHANGES
DATE TYPE OF WORK RATE PER CREDIT
TERMINATION OF EMPLOYMENT
DATE
REASON
RECOMMENDED FOR RE-EMPLOYMENT: YES ☐ NO ☐
DATE RE-EMPLOYED
DATE UNEMPLOYMENT COMPENSATION BEGAN
AMOUNT PER WEEK CHARGEABLE TO OUR ACCOUNT \$
ADDITIONAL REMARKS ON REVERSE
TAXABLE EARNINGS
UNEMP INS MONEY OTHER
1ST PERIOD REGULAR
SPECIAL
2ND PERIOD REGULAR
SPECIAL
3RD PERIOD REGULAR
SPECIAL
4TH PERIOD REGULAR
SPECIAL
TOTALS
OLD-AGE ANNTY PERIOD TO-DATE
1ST PERIOD
2ND PERIOD
3RD PERIOD
4TH PERIOD
↑ THIS AMOUNT WILL NOT EXCEED \$2000.00



NAME V. C. Galvan

Sheet #2

EMPLOYEE
S. S. ACCT. NO. 546-09-2662M. A. T. N
ON LINE N

ADDRESS

ADDRESS
CHANGE

DATE EMPLOYED 9/15/36

OCCUPATION

RATE \$

PSR

FULL TIME
WEEKLY HOURSFULL TIME
EARNINGS \$STRAIGHT
EMPLOYMENTFULL TIME
PART TIME

DATE		TIME WORKED	TIME LOST	PAY-ROLL RECORD				TOTAL EARNINGS		DEDUCTIONS	
PERIOD EADS	PAID	DAYS	HOURS	DAYS	HOURS	REF	AMOUNT	REF	AMOUNT	REF	AMOUNT
1	38	6					1000				11
2		20					2100				21
3		27					2730				27
4	2	3					2940				29
5		10					3150				32
6		17					420				04
7		24					420				04
8	7	7					2940				29
9		14					2100				21
10		21					1050				11
11		28					2940				29
12	8	4					3150				32
13		11					1260				13
14		25					4620				46
15	9	1					3150				32
16		8					2940				29
17		15					2730				27
18		22					2520				25
19		29					1890				19
20	10	27					1920				19
21	11	3					3360				34
22		10					3120				31
23		17					1920				19
24	12	14					480				05
25		23					2880				29
26		30					1440				14
27	3	4					1800				18
28		11					1440				14
29		18					1200				12
30		25					800				08
31	5	6					1920				19

TAX STATUS

IS THIS EMPLOYMENT EXEMPT FROM

STATE U I REASON

FED U I REASON

FED O A REASON

DATE OF BIRTH 1908

PLACE OF BIRTH Strong City Kansas

AGE DATE BORN 1973

EMPLOYMENT CONTRACT MADE IN STATE OF

WORK DONE IN STATE OF

PLACE OF EMPLOYMENT

IN CASE OF ACCIDENT NOTIFY

NAME Mrs. Mary Caudillo

ADDRESS Corcoran Calif

PHONE

RELATIONSHIP Mother.

RATE CHANGES

DATE	TYPE OF WORK	RATE PER	OR DUTY

TERMINATION OF EMPLOYMENT

DATE

REASON:

RECOMMENDED FOR RE-EMPLOYMENT: YES ☐ NO ☐

DATE RE-EMPLOYED

DATE UNEMPLOYMENT COMPENSATION BEGAN

AMOUNT PER WEEK CHARGEABLE TO OUR ACCOUNT \$

ADDITIONAL MEMOS ON REVERSE ☐

TAXABLE EARNINGS

UNEMP. INS	MONEY	OTHER
1ST PERIOD REGULAR		
SPECIAL		
2ND PERIOD REGULAR		
SPECIAL		
3RD PERIOD REGULAR		
SPECIAL		
4TH PERIOD REGULAR		
SPECIAL		
TOTALS		
OLD-AGE ANNTY	PERIOD	TO-DATE
1ST PERIOD		
2ND PERIOD		
3RD PERIOD		
4TH PERIOD		

† THIS AMOUNT WILL NOT EXCEED \$3000.00

COMPENSATION RECORD

STANDARD FORM 656W PRINTED IN U.S.A.
CHARLES HADLEY CO. PATENTPUSERS, LOS ANGELES, CALIF. 90001
USE APPROPRIATE SYMBOLS TO DESIGNATE REASONS FOR TIME LOST

REG. U.S. PAT. OFF.



NAME **Pete Galvan**
 ADDRESS **Box 4 Co. Corcoran California.**
 DATE EMPLOYED **1/10/36**

Sheet **42**

EMPLOYEE **559-05-4990**

COMPANY **OR CLOCK NO**

2

STANDARD FORM CSBW PRINTED IN U.S.A.
 CHARLES HOLT CO. PATENTED IN U.S.A. AND FOREIGN COUNTRIES
 COMPENSATION RECORD
 USE APPROPRIATE SYMBOLS TO DESIGNATE REASONS FOR TIME LOST

DATE	PERIOD	PAID	TIME WORKED	TIME LOST	PAY-ROLL RECORD				TOTAL EARNINGS	DEDUCTIONS		
					DATE	HRS	MIN	SEC		UNEMP INS	OLD AGE ANNTY	OTHER
1	38											
2	1	6										
3	14											
4	20											
5	27											
6	2	3										
7	10											
8	17											
9	24											
10	3											
11	10											
12	17											
13	5	5										
14	12											
15	19											
16	7	7										
17	14											
18	21											
19	28											
20	8	4										
21	11											
22	18											
23	25											
24	9	1										
25	8											
26	15											
27	22											
28	29											
29	0	2										
30	11	3										
31	10											
32	17											
33	24											
34	12	1										
35	7											
36	12											
37	3	4										
38	11											
39	18											
40												
41												
42												
43												
44												
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46												
47												
48												
49												
50												
51												
52												
53												
54												
55												
56												
57												

TAX STATUS

THIS EMPLOYMENT EXEMPT FROM

STATE U I REASON

FED U I REASON

FED O A REASON

DATE OF BIRTH **1/5/13**

PLACE OF BIRTH **Juarez, Mexico**

AGE **1978**

DATE RECOMMENDED **1978**

EMPLOYMENT CONTRACT MADE IN STATE OF

WORK DONE IN STATE OF

PLACE OF EMPLOYMENT

IN CASE OF ACCIDENT NOTIFY

NAME **Mrs. Pete Galvan**

ADDRESS **Box #4 Corcoran California**

PHONE

RELATIONSHIP **Wife**

RATE CHANGES

DATE	TYPE OF WORK	RATE PER	GED BY

TERMINATION OF EMPLOYMENT

DATE

REASON

RECOMMENDED FOR RE-EMPLOYMENT YES ☐ NO ☐

DATE RE-EMPLOYED

DATE UNEMPLOYMENT COMPENSATION BEGAN

AMOUNT PER WEEK

CHARGEABLE TO OUR ACCOUNT \$

ADDITIONAL MEMOS ON REVERSE

TAXABLE EARNINGS

UNEMP INS	MONEY	OTHER
1ST PERIOD REGULAR		
SPECIAL		
2ND PERIOD REGULAR		
SPECIAL		
3RD PERIOD REGULAR		
SPECIAL		
4TH PERIOD REGULAR		
SPECIAL		
TOTALS		
OLD-AGE ANNTY	PERIOD	TO-DATE
1ST PERIOD		
2ND PERIOD		
3RD PERIOD		
4TH PERIOD		

† THIS AMOUNT WILL NOT EXCEED \$5000.00

NAME Andrew Galvan
ADDRESS Corcoran California

Sheet #2 EMPLOYEE S. S. ACCT. NO. 546-09-2661

COMPANY OR CLOCK NO

ADDRESS CHANGE

DATE EMPLOYED 9/35

OCCUPATION

RATE \$

PER

FULL TIME WEEKLY HOURS

FULL TIME EARNINGS \$

STEADY TEMPORARY

NE OF

FULL TIME PART TIME

PAY-ROLL RECORD

TOTAL EARNINGS

DEDUCTIONS

TAX STATUS

IS THIS EMPLOYMENT EXEMPT FROM

STATE U I REASON
FED U I REASON
FED O A REASON

DATE OF BIRTH 11/30/03
PLACE OF BIRTH Juarez Mexico

AGE DATE BECAME 1968

EMPLOYMENT CONTRACT
MADE IN STATE OF
WORK DONE IN
STATE OF
PLACE OF
EMPLOYMENT

IN CASE OF ACCIDENT NOTIFY
NAME Mrs. A. Galvan
ADDRESS Corcoran Calif.

PHONE
RELATIONSHIP

RATE CHANGES

DATE	TYPE OF WORK	RATE PER	DEDUCT

TERMINATION OF EMPLOYMENT

DATE

REASON:

RECOMMENDED FOR
RE-EMPLOYMENT: YES ☐ NO ☐

DATE RE-EMPLOYED

DATE UNEMPLOYMENT
COMPENSATION BEGAN
AMOUNT PER WEEK
CHARGEABLE TO OUR ACCOUNT \$

ADDITIONAL MEMOS ON REVERSE ☐

TAXABLE EARNINGS

UNEMP. INS.	MONEY	OTHER
1ST PERIOD REGULAR		
SPECIAL		
2ND PERIOD REGULAR		
SPECIAL		
3RD PERIOD REGULAR		
SPECIAL		
4TH PERIOD REGULAR		
SPECIAL		
TOTALS		
OLD-AGE AMNTY	PERIOD	TO-DATE †
1ST PERIOD		
2ND PERIOD		
3RD PERIOD		
4TH PERIOD		

† THIS AMOUNT WILL NOT EXCEED \$5000.00

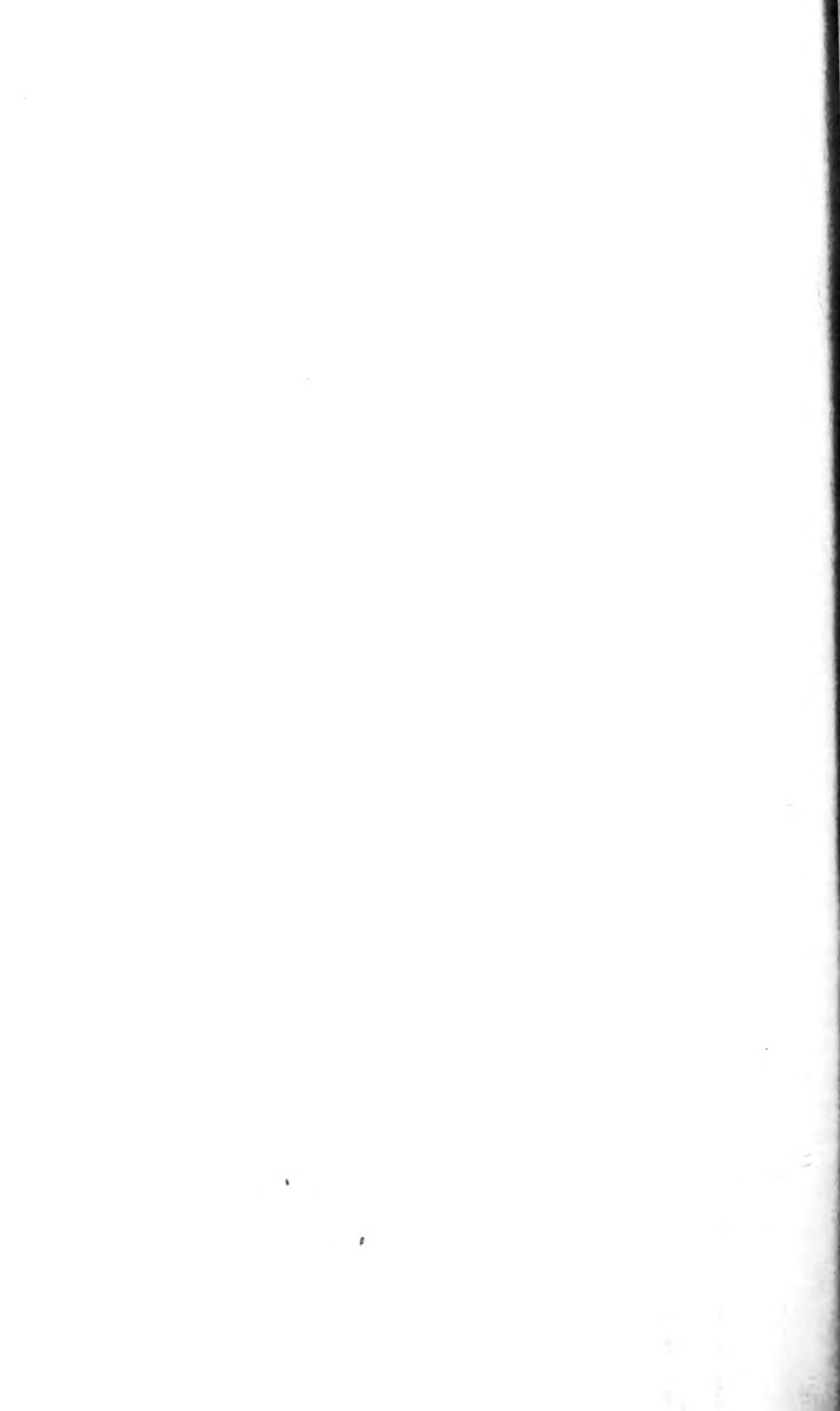
COMPENSATION RECORD

CHARLES HADLEY CO. PRINTED IN U.S.A.
USE APPROPRIATE SYMBOLS TO DESIGNATE REASONS FOR TIME LOST

REG. U & PAY OFF

LINE	DATE	TIME WORKED	TIME LOST	SALARY OR WAGES	TOTAL EARNINGS	DEDUCTIONS
1	2	3	4	5	6	7
1	6			21.00	21	21
2	14			25.20	25	25
3	20			24.70	24	24
4	27			27.70	27	27
5	23			21.00	21	21
6	10			14.70	15	15
7	17			31.50	32	32
8	24			27.30	27	27
9	33			24.40	24	24
10	10			31.50	32	32
11	17			19.60	20	20
12	24			23.10	23	23
13	31			23.10	23	23
14	4-7			26.60	27	27
15	14			23.10	23	23
16	21			23.10	23	23
17	28			23.10	23	23
18	5			24.50	25	25
19	12			24.40	24	24
20	19			28.35	28	28
21	26			23.10	23	23
22	6			7.70	08	08
23	30			23.80	24	24
24	7			24.40	24	24
25	14			24.40	24	24
26	21			27.30	27	27
27	28			24.40	24	24
28	5			31.50	32	32
29	11			24.40	24	24
30	18			27.30	27	27
31	25			24.40	24	24
32	1			31.50	32	32
33	8			24.40	24	24
34	15			27.30	27	27
35	22			24.40	24	24
36	29			27.30	27	27
37	6			24.40	24	24
38	13			34.60	35	35
39	20			30.10	30	30
40	27			31.45	31	31
41	3			33.60	34	34
42	10			36.00	36	36
43	17			27.20	27	27
44	24			28.80	29	29
45	1			24.00	24	24
46	8			26.80	27	27
47	15			24.00	24	24
48	22			24.00	24	24
49	29			25.00	25	25
50	5			32.40	32	32







COMPENSATION RECORD

CHARLES R. HADLEY, JR. - PATENT/INVENTOR - 1944-1945

NAME

Joe Briley

COMPANY
EMPLOYEE NO.

DATE OF BIRTH 7-29-1927 PLACE OF BIRTH Oklahoma
AGE 29 DATE BECOMES 65 1973
STEADY TEMPORARY TIME PART TIME
WORK DONE IN DISTRICT Corcoran
DEDUCTIONS
UNEMP. INS. OLD-AGE ANNTY
TAX STATUS

ADDRESS

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DATE

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EMPLOYED 6-20-37

EMPLOYMENT CONTRACT

MADE IN STATE OF

DATE

PERIOD

WORKED

TIME LOST

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STEADY TEMPORARY TIME PART TIME
WORK DONE IN DISTRICT Corcoran

DEDUCTIONS

UNEMP. INS. OLD-AGE ANNTY

TAX STATUS

LINE NO.	DATE	PERIOD	WORKED	TIME LOST	SALARY OR WAGES	OTHER COMPEN.	TOTAL TAXABLE EARNINGS	UNEMP. INS.	OLD-AGE ANNTY
1	2	3	4	5	6	7	8	9	10
1	1-3								
2	3-7				2000		2000	20	20
3	7-14				2000		2000	20	20
4	14-21				2000		2000	20	20
5	21-28				2000		2000	20	20
6	28-3-1				3000		3000	30	30
7	3-1				3300		3300	33	33
8	1-8				3300		3300	33	33
9	8-15				3360		3360	34	34
10	15-22				3000		3000	30	30
11	22-29				3300		3300	33	33
12	29-4-5				3300		3300	33	33
13	5-12				3300		3300	33	33
14	12-19				3360		3360	34	34
15	19-26				2000		2000	20	20
16	26-3-3				1800		1800	18	18
17	3-3				2000		2000	20	20
18	3-10				1800		1800	18	18
19	10-17				2000		2000	20	20
20	17-24				1800		1800	18	18
21	24-31				2000		2000	20	20
22	31-7-1				1800		1800	18	18
23	7-1				2000		2000	20	20
24	1-8				1800		1800	18	18
25	8-15				2000		2000	20	20
26	15-22				1800		1800	18	18
27	22-29				2000		2000	20	20
28	29-4-5				1800		1800	18	18
29	5-12				2000		2000	20	20
30	12-19				1800		1800	18	18
31	19-26				2000		2000	20	20
32	26-3-3				1800		1800	18	18
33	3-3				2000		2000	20	20
34	3-10				1800		1800	18	18
35	10-17				2000		2000	20	20
36	17-24				1800		1800	18	18
37	24-31				2000		2000	20	20
38	31-7-1				1800		1800	18	18
39	7-1				2000		2000	20	20
40	1-8				1800		1800	18	18
41	8-15				2000		2000	20	20
42	15-22				1800		1800	18	18
43	22-29				2000		2000	20	20
44	29-4-5				1800		1800	18	18
45	5-12				2000		2000	20	20
46	12-19				1800		1800	18	18
47	19-26				2000		2000	20	20
48	26-3-3				1800		1800	18	18
49	3-3				2000		2000	20	20
50	3-10				1800		1800	18	18
51	10-17				2000		2000	20	20
52	17-24				1800		1800	18	18
53	24-31				2000		2000	20	20
54	31-7-1				1800		1800	18	18
55	7-1				2000		2000	20	20
56	1-8				1800		1800	18	18
57	8-15				2000		2000	20	20
58	15-22				1800		1800	18	18
59	22-29				2000		2000	20	20
60	29-4-5				1800		1800	18	18
61	5-12				2000		2000	20	20
62	12-19				1800		1800	18	18
63	19-26				2000		2000	20	20
64	26-3-3				1800		1800	18	18
65	3-3				2000		2000	20	20
66	3-10				1800		1800	18	18
67	10-17				2000		2000	20	20
68	17-24				1800		1800	18	18
69	24-31				2000		2000	20	20
70	31-7-1				1800		1800	18	18
71	7-1				2000		2000	20	20
72	1-8				1800		1800	18	18
73	8-15				2000		2000	20	20
74	15-22				1800		1800	18	18
75	22-29				2000		2000	20	20
76	29-4-5				1800		1800	18	18
77	5-12				2000		2000	20	20
78	12-19				1800		1800	18	18
79	19-26				2000		2000	20	20
80	26-3-3				1800		1800	18	18
81	3-3				2000		2000	20	20
82	3-10				1800		1800	18	18
83	10-17				2000		2000	20	20
84	17-24				1800		1800	18	18
85	24-31				2000		2000	20	20
86	31-7-1				1800		1800	18	18
87	7-1				2000		2000	20	20
88	1-8				1800		1800	18	18
89	8-15				2000		2000	20	20
90	15-22				1800		1800	18	18
91	22-29				2000		2000	20	20
92	29-4-5				1800		1800	18	18
93	5-12				2000		2000	20	20
94	12-19				1800		1800	18	18
95	19-26				2000		2000	20	20
96	26-3-3				1800		1800	18	18
97	3-3				2000		2000	20	20
98	3-10				1800		1800	18	18
99	10-17				2000		2000	20	20
100	17-24				1800		1800	18	18

TERMINATION OF EMPLOYMENT

DATE

REASON:

INELIGIBLE FOR UNEMPLOY COMPENSATION ☐

REASON:

RECOMMENDED FOR RE EMPLOYMENT: YES-NO

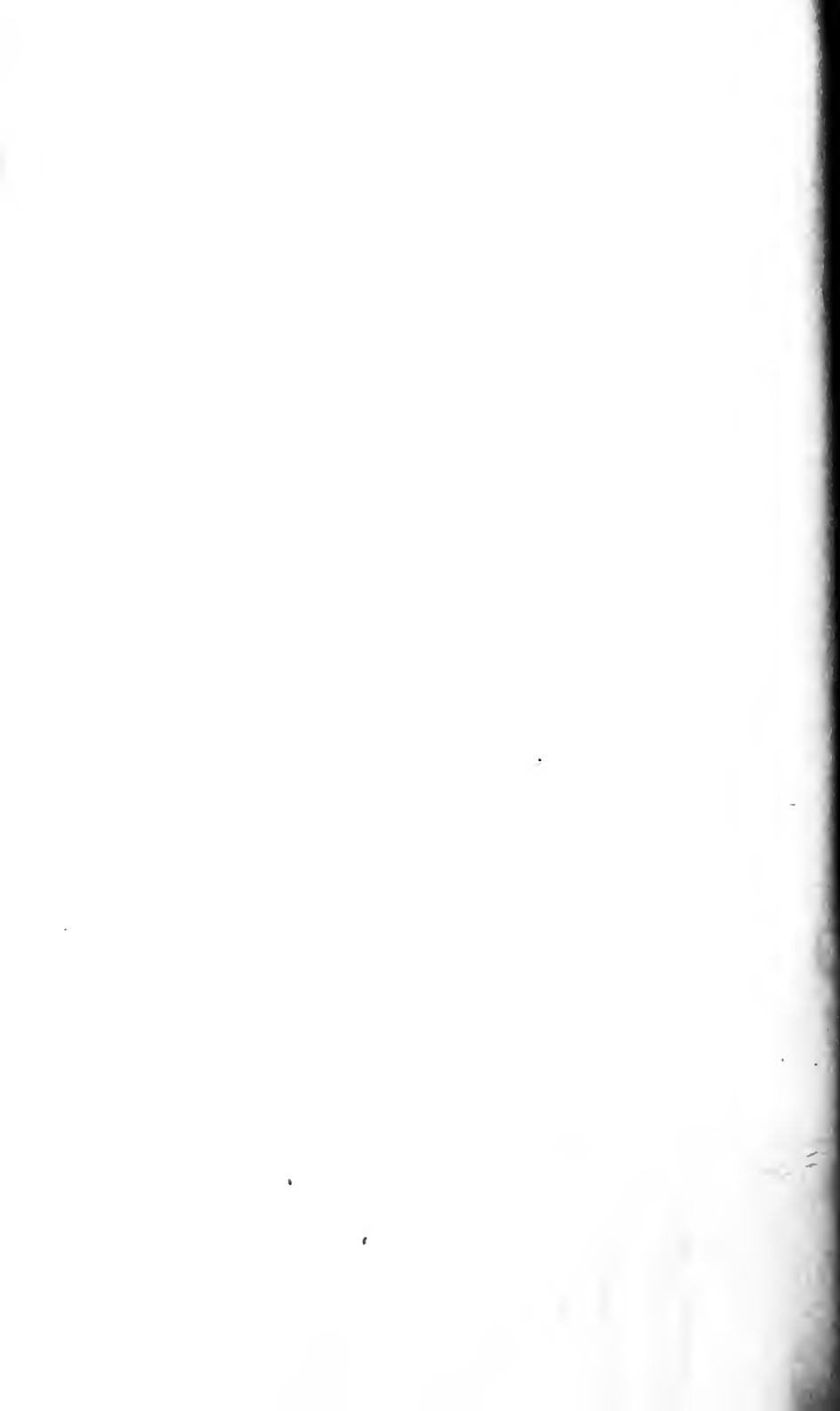
DATE RE EMPLOYED

REGISTERED WITH PUBLIC EMPLOYMENT OFFICE

DISTRICT CERTIFICATE NUMBER

MEMO.

TAXABLE EARNINGS	UNEMP. INS.	OLD-AGE ANNTY
1ST QUARTER		
2ND QUARTER		
3RD QUARTER		
4TH QUARTER		
TOTALS		
SUMMARY	CURRENT YR	PREVIOUS YEARS
TOTAL EARNINGS		
NO. OF WEEKS WORKED		
AVG. WEEKLY WAGE		
TOTAL HOURS WORKED		
AVERAGE WEEKLY HOURS		
HOURLY RATE EARNED		
UNEMPLOY INS. TAX DEDUCTED		
FED. OLD-AGE TAX DEDUCTED		



COMPENSATION RECORD

Sheet #1

540-10-591

NAME George Andrade
ADDRESS Gen Del, Corcoran, California,

COMPANY
EMPLOYEE

DATE 3/17/12 PLACE Durango Mexico
DATE OF BIRTH 9/10/34
DATE EMPLOYED 9/10/34
OCCUPATION
EMPLOYMENT CONTRACT
MADE IN STATE OF

1977

LINE NO	DATE PERIOD ENDS	WORKED	TIME LOST	SALARY OR WAGES	TOTAL TAXABLE EARNINGS
1	2	3	4	5	6
1	1-6			2320	
2	17			2730	
3	20			2740	
4	27			3150	
5	23			2440	
6	10			2730	
7	24			2740	
8	24			3000	
9	3-3			2740	
10	10			2730	
11	17			2740	
12	5-5			1080	
13	1			2440	
14	14			1630	
15	7-7			2940	
16	14			3040	
17	21			3120	
18	28			3300	
19	8-1			3000	
20	11			3360	
21	18			3120	
22	25			3360	
23	1-1			3600	
24	8			3360	
25	15			3120	
26	22			3360	
27	29			2640	
28	10-13			3240	
29	20			3420	
30	27			3340	
31	11-3			3240	
32	10			3120	
33	17			3000	
34	24			2360	
35	2-1			220	

Mrs. Geo. Andrade
Diary Ave.,
Corcoran, Calif.

RATE PER
Rate Per

TERMINATION OF EMPLOYMENT

DATE
REASON
REASON
REASON

RECOMMENDATION FOR REEMPLOYMENT YES NO

DATE REEMPLOYED
REEMPLOYED AT THE
PUBLIC EMPLOYMENT OFFICE

DATE
CERTIFICATE
NUMBER

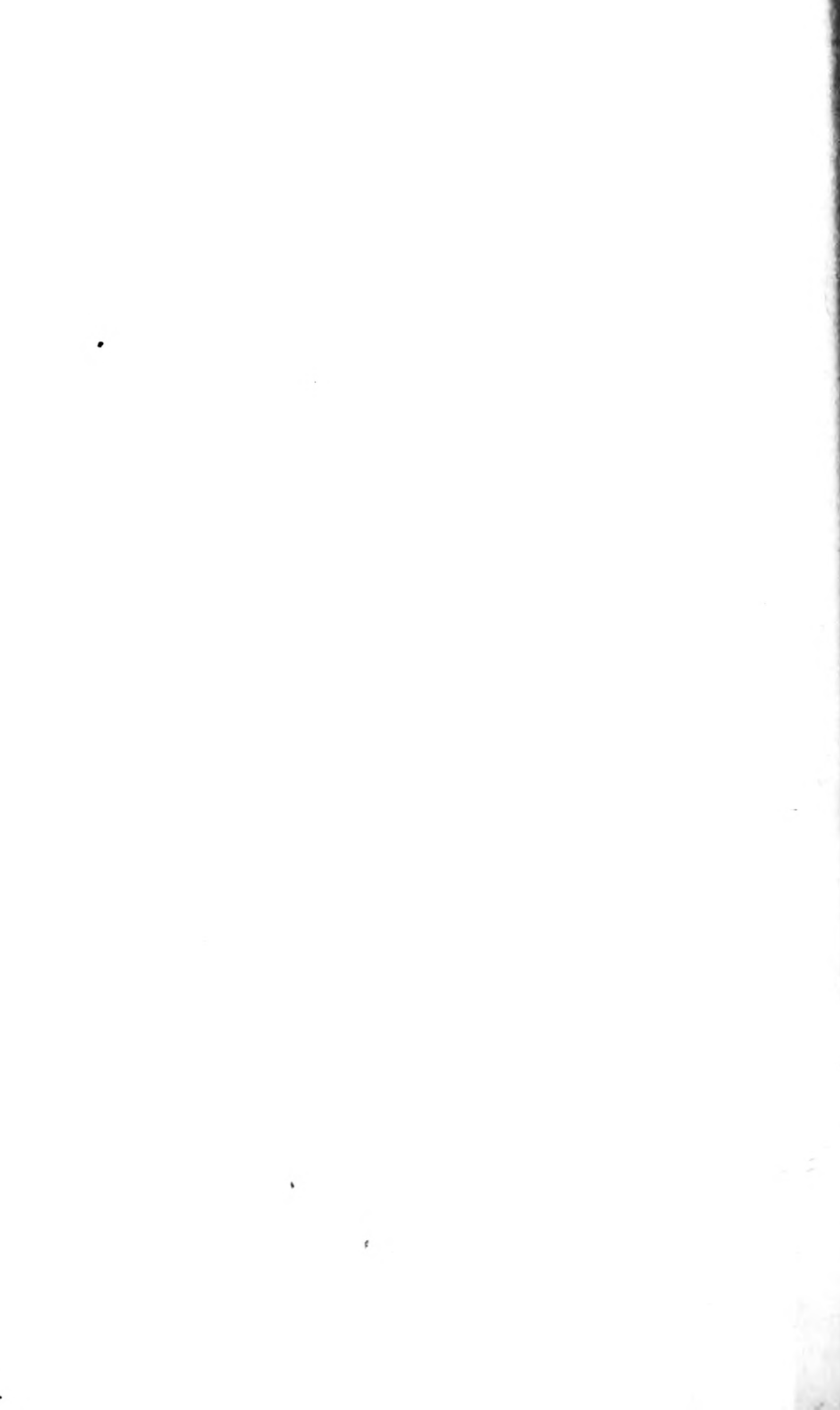
TOTAL EARNINGS
UNEMPLOYMENT
UNEMPLOYMENT

1st QUARTER
2nd QUARTER
3rd QUARTER
4th QUARTER

TOTALS
UNEMPLOYMENT
CURRENT YEAR
PRIOR YEARS

TOTAL EARNINGS
NET WEEKS
GROSS WEEKLY
GROSS
GROSS WORKED
GROSS HOURS
GROSS EARNED

GROSS EARNED
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TAX DEDUCTIBLE



NAME

ADDRESS

ADDRESS

CHANGES

DATE

EMPLOYED

OCCUPATION

PAY

PER

EMPLOYEE
S. S. ACCT NODEPT OR
PLACE OF WORK

MALE FEMALE

MARRIED SINGLE

COLOR

REASON FOR
DEPARTURE

STEADY TEMPORARY

FULL TIME PART TIME

FULL TIME
WEEKLY HOURSFULL TIME
EARNINGS \$

DEDUCTIONS

TAX STATUS

IS THIS EMPLOYMENT EXEMPT FROM

DATE

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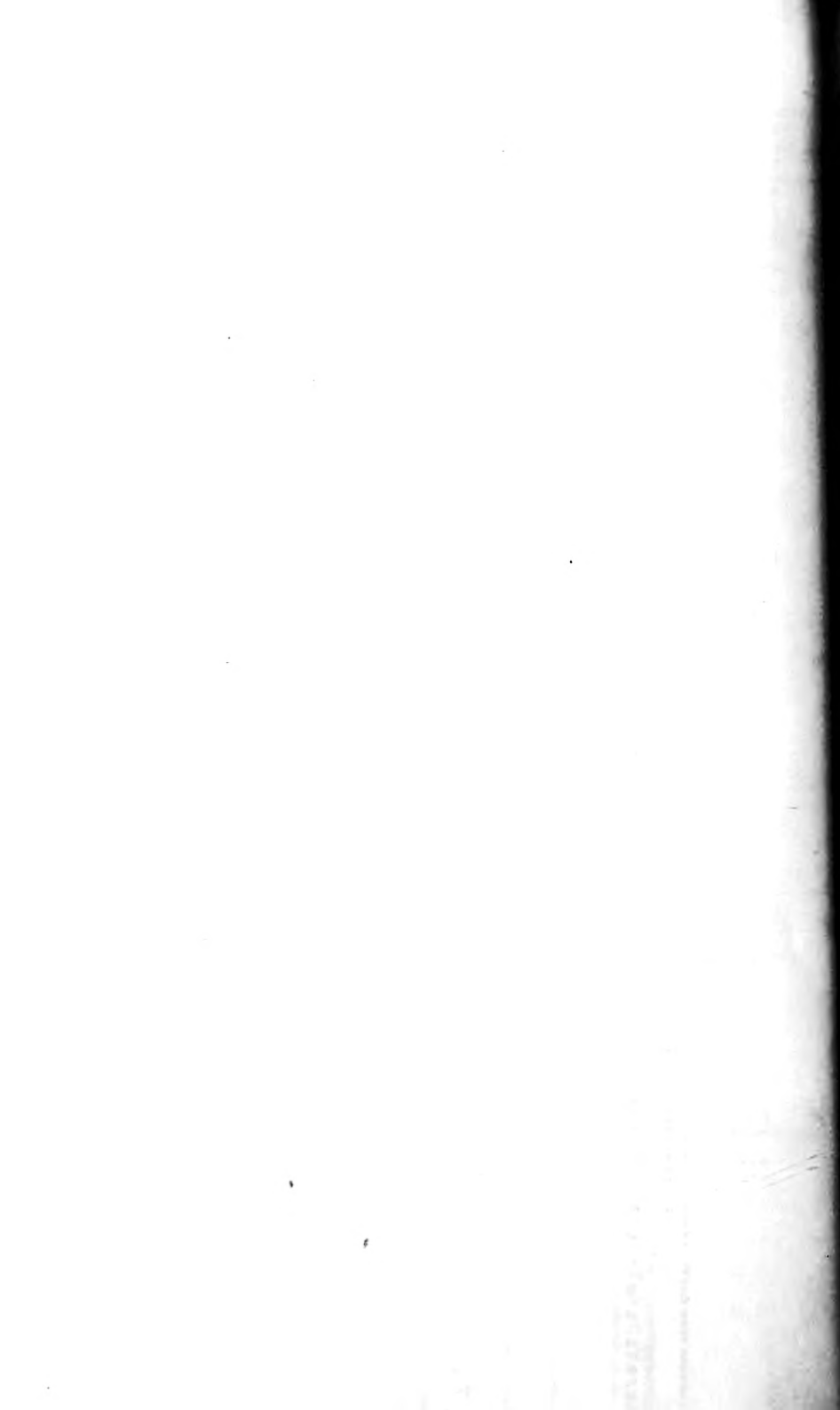
TIME

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DATE

PERIOD

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NAME B. L. Ely
ADDRESS Corcore Calif.

Sheet#3

EMPLOYEE 559-05-4996

DEPT. OR PLACE OF WORK

DATE EMPLOYED 7/24/36

OCCUPATION

RATE \$

PER

FULL TIME WEEKLY HOURS

FULL TIME EARNINGS \$

STEADY TEMPORARY

FULL TIME PART TIME

PAY-ROLL RECORD

DEDUCTIONS

TAX STATUS

THIS EMPLOYMENT EXEMPT FROM

STATE U REASON
FED. U REASON
D.A. REASON

DATE OF BIRTH 9/8/1909
PLACE OF BIRTH DeLeon Texas

AGE DATE DECEMBER 1974

EMPLOYMENT CONTRACT MADE IN STATE OF
WORK DONE IN
STATE OF
PLACE OF EMPLOYMENT

IN CASE OF ACCIDENT NOTIFY

NAME Mrs. Frankie Ely
ADDRESS Corcoran Calif.

PROSE RELATIONSHIP Wife

RATE CHANGES

DATE	TYPE OF WORK	RATE PER	PERIOD

TERMINATION OF EMPLOYMENT

DATE

REASON

RECOMMENDED FOR RE EMPLOYMENT YES NO

DATE RE EMPLOYED

DATE UNEMPLOYMENT COMPENSATION BEGAN

AMOUNT PER WEEK CHARGEABLE TO OUR ACCOUNT \$

ADDITIONAL MEMOS ON REVERSE

TAXABLE EARNINGS

UNEMP. INS.	MONEY	OTHER
1ST PERIOD REGULAR		
SPECIAL		
2ND PERIOD REGULAR		
SPECIAL		
3RD PERIOD REGULAR		
SPECIAL		
4TH PERIOD REGULAR		
SPECIAL		
TOTALS		
OLD AGE ANNTY	PERIOD	TO DATE
1ST PERIOD		
2ND PERIOD		
3RD PERIOD		
4TH PERIOD		

THIS AMOUNT WILL NOT EXCEED \$5000.00

DATE	TIME WORKED	TIME LOST	SALARY OR WAGES	TOTAL EARNINGS	DEDUCTIONS
1 6			28.80		27 27
2 17			31.20		31 31
3 20			33.60		34 34
4 27			28.80		26 26
5 3			33.60		34 34
6 10			31.20		31 31
7 17			33.60		34 34
8 24			36.00		36 36
9 3			33.60		34 34
10 10			31.20		31 31
11 17			36.00		36 36
12 24			16.00		16 16
13 4			8.00		08 08
14 2			28.00		28 28
15 28			28.00		28 28
16 5			28.00		28 28
17 12			28.00		28 28
18 9			28.00		28 28
19 7			24.00		24 24
20 14			24.00		24 24
21 14			25.20		28 28
22 21			31.20		32 32
23 28			27.60		29 29
24 5			27.30		27 27
25 11			25.20		25 25
26 8			31.20		32 32
27 25			29.40		29 29
28 9			29.40		29 29
29 8			29.40		29 29
30 5			27.30		27 27
31 22			29.40		29 29
32 26			19.40		19 19
33 2			37.80		38 38
34 10			40.50		41 41
35 17			19.40		19 19
36 2 9 1939			24.00		24 24

CONFIDENTIAL

SECRET

CONFIDENTIAL

(Testimony of Louis T. Robinson.)

Q. By Mr. Mouritsen: Now, Mr. Robinson, you are requested under the subpoena to produce certain correspondence. Do you have that correspondence with you? A. I have it, yes, sir.

Q. May I have it?

A. My attorney has it.

Mr. Wingrove: Mr. Examiner, I would like to state that I have advised Mr. Robinson not to respond to paragraphs 3, 4, 5, and 6 of the subpoena on the ground that the subpoena does not meet the requirement of the law in that it is too general, vague, indefinite; and furthermore, it does not describe with [58] *particularly* required by the rules and regulations of the National Labor Relations Act, the documents, production of which is desired, with such particularity to enable them to be identified for the purpose of production. We cannot tell from the subpoena, which is couched in very general terms, asking us to produce all correspondence on labor matters, as to just what particular evidence is desired by the Attorney for the Board. [59]

Trial Examiner Lindsay: Well, if the subpoena says all correspondence relative to labor matters, it seems just that. That is the thing that should be produced.

Mr. Wingrove: But it is not limited to this particular labor matter. We may have lots of labor matters. It is not limited. The wording of the subpoena is this: "All correspondence, letters, telegrams—" I am reading from Paragraph 3—"and memoran-

(Testimony of Louis T. Robinson.)

dum received at and for the Corcoran Plant of J. G. Boswell Company during 1938 and 1939, to the date of this subpoena, relating to labor policies, labor relations, labor disputes of the Corcoran plant, affecting the Corcoran plant, and boycott of the products by the American Federation of Labor."

It is very general, very general as to the time, very general as to the nature of the information desired, and it does not request with any particularity and is not tied into matters that might be relevant to any of the charges contained in the complaint, and I think that that same statement also applies to the request which was made in paragraphs 4, 5 and 6 of the subpoena.

Trial Examiner Lindsay: Well, the subpoena has been issued.

Off the record,——

Mr. Clark (Interrupting): Just a moment.

Mr. Wingrove: I will——

Trial Examiner Lindsay (Interrupting): Just a second. I [60] want to ask something. I would just as soon have it on the record as not. I was doing this for your benefit.

Now, what is in that subpoena that you do not understand?

Mr. Wingrove: It is too general. I was about to suggest, Mr. Examiner, that if Mr. Mouritsen would point out any particular letters or specific correspondence, and show the relevancy to this proceeding, to the matters of this particular case, we would be

(Testimony of Louis T. Robinson.)

very glad to produce it, but we don't want to produce a great mass of correspondence, a large portion of which couldn't possibly be relevant. It goes back and covers, for instance, the entire year of 1938.

Trial Examiner Lindsay: I only have this to say. The question of relevancy is not a matter which rests with you or with anyone, except this Court, and if it is not relevant and material, you can object to it and of course, those matters can be taken care of.

Now, I suggest that you gentlemen get together, and also that you carry out the request of the subpoena and bring the correspondence in that is asked for.

Q. By Mr. Mouritsen: May I ask you this, Mr. Robinson, during the year 1938, was any correspondence relative to this particular labor dispute about which we are now holding a hearing, sent from the Corcoran plant of J. G. Boswell Company?

Mr. Clark: I object to the use of the term "labor dispute." I submit the objection. It calls for a conclusion of [61] this witness.

Trial Examiner Lindsay: He may answer. You may have an exception.

The Witness: I didn't understand.

Trial Examiner Lindsay: Read the question.

(The pending question was read by the reporter, as set forth above.)

The Witness: Yes, sir.

Q. By Mr. Mouritsen: And during the period of

(Testimony of Louis T. Robinson.)

1938, was any correspondence received at the Corcoran plant of J. G. Boswell Company relative to the particular labor dispute about which we are now holding a hearing? A. Yes.

Q. Do you know of such correspondence and are you able to obtain such correspondence? Is that correct? A. Yes, sir.

Q. Now, during the period—during the year 1939 to date, have you received any correspondence at the Corcoran plant relative to the particular labor dispute about which we are now holding a hearing?

Mr. Clark: Same objection as to the term “labor dispute.”

Trial Examiner Lindsay: He may answer.

The Witness: If I understand correctly, that is the same question I answered, or I didn’t understand.

Mr. Clark: It is for another year. [62]

Q. By Mr. Mouritsen: For the year 1939.

A. For the year 1939? I am not sure about that.

Q. In other words, you don’t recall receiving, during the year 1939, any correspondence relative to this particular labor dispute about which we are now holding a hearing?

Mr. Clark: Now, may it please the Examiner, this particular labor dispute is vague and indefinite, and no human being could answer the question. There are five or six charges set forth in this complaint in this matter. One has to do with Mrs. Dunn and the Corcoran Exchange; another has to do with a demon-

(Testimony of Louis T. Robinson.)

stration alleged to have taken place in November of '38; another one was a demonstration alleged to have taken place in January, and so on down the line.

Now counsel is asking whether there is any correspondence with reference to this labor dispute, and I made an objection based upon the proposition that it called for a conclusion of this witness.

It furthermore is vague and indefinite, and is susceptible of no answer. That points out, if I might interrupt your Honor just one moment, that points out exactly the point which Mr. Wingrove is making, unless we are awfully wrong so far as reading the cases is concerned, so far as the enforceability of subpoenas is concerned, the Government, even in a case such as this, has no right to simply ask to have the entire files of an employer turned over to it for the representatives of the Government [63] to go through it to see what they can find. The function of a subpoena duces tecum is to call for evidence on any particular matter which is known, or which there is reasonable cause to suppose is in existence.

Now, I think we could obviate this whole thing if counsel would proceed with his examination on the facts of the case and, as we get to different instances which occur, different episodes, if we could call them that, and ask the question whether there was any correspondence, and if we have it, we will produce it. All that Mr. Wingrove is objecting to doing is to turn the complete file over to counsel. I think we could make time that way and not get ourselves at logger-heads. [64]

(Testimony of Louis T. Robinson.)

Trial Examiner Lindsay: As I understand this matter, at the beginning of the taking of this testimony the statement was made that the testimony now being taken or attempted to be taken would cover the Boswell Company, and when that had been completed we would go on to the next company and when that was completed go on to the next. The particular matter, as I understand it, in question is any of those matters pertaining to the question now before this court, is correspondence that he is asking for. It doesn't seem to me that is so indefinite and uncertain.

Mr. Clark: Simply, may it please your Honor, we are talking at cross purposes. If we start in developing the facts applicable to Boswell, any correspondence which properly pertains to those facts, if demanded, will be produced without the necessity of a subpoena, but as I understand counsel's position, we do not intend to turn over the general correspondence files. That is too general.

Mr. Mouritsen: Mr. Examiner, in this issue, lest we may consider counsel's proposal seriously, I think that the evidence is absurdly clear. In other words, counsel proposes that every time an incident comes in, we recall Mr. Robinson and ask him if there was any particular correspondence at that point, that we break in and call Mr. Robinson and lay the foundation and what is material.

This is an orderly method of laying the foundation and [65] making the record clear.

Mr. Clark: If counsel is going to stand on that

(Testimony of Louis T. Robinson.)

subpoena either with respect to the Boswell Company or the Farmers in that form and ask for all of the things in regard to the plant, all of the correspondence, we will have to argue the matter in a Federal court.

Trial Examiner Lindsay: Isn't he asking for the matters that are here involved?

Mr. Clark: He isn't.

Trial Examiner Lindsay: Listen to the questions.

Mr. Clark: I am speaking about the subpoena now.

Trial Examiner Lindsay: Let us not argue the matter. Proceed.

Mr. Mouritsen: Was there a question pending?

(The question referred to was read by the reporter, as set forth above.)

Mr. Clark: My objection is that it is vague and indefinite, uncertain. There are four or five different matters in the complaint all with respect to Boswell Company.

Which one does the question refer to?

Trial Examiner Lindsay: He may answer.

The Witness: I couldn't say. I don't recall any particular letters coming in during the year 1939, so for me to be called on to say whether or not during the year 1939 I received—about a letter—unless I can recall a particular letter, I [66] don't think I would be in a shape to answer it. I don't remember any particular letter coming in to my office during the year 1939.

(Testimony of Louis T. Robinson.)

Q. By Mr. Mouritsen: Do you recall having sent any letters relative to the labor dispute about which we now hold a hearing?

Mr. Clark: The same objection, your Honor.

Mr. Mouritsen: May I be permitted to finish my question?

Mr. Clark: Pardon me.

Mr. Mouritsen: Will you read the question?

(The question referred to was read by the reporter, as set forth above.)

Q. By Mr. Mouritsen (Continuing): —during the year 1939?

Mr. Clark: Same objection, your Honor.

Trial Examiner Lindsay: He may answer.

The Witness: I make the same answer I made to the other question that I don't remember any particular letter during the year 1939 about this labor dispute. I might have and I might not have. I don't remember any particular letter going out, and it appears to me I would have to remember one before I could answer that question.

Mr. Mouritsen: Now, with the understanding that Mr. Robinson will be made available when this additional information is furnished relative to the matter requested in sections [67] 1 and 2 of the subpoena duces tecum, I have no further questions at this time.

Mr. Clark: I have none. Of course, we will be permitted to recall this witness as part of our case?

Trial Examiner Lindsay: And you will be per-

(Testimony of Louis T. Robinson.)

mitted to cross examine when Mr. Mouritsen is finished on direct examination.

Mr. Clark: I have no further questions.

And it is my understanding that Mr. Robinson will be made available at all times during the hearing, isn't that true?

Mr. Wingrove: That is true.

Trial Examiner Lindsay: Now, off the record.

(Here followed discussion off the record.)

Trial Examiner Lindsay: On the record.

(Witness excused.)

Trial Examiner Lindsay: We will have a ten-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:) [68]

Trial Examiner Lindsay: The hearing is called to order.

Mr. Mouritsen: I call Mr. Prior.

E. F. PRIOR

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Mouritsen:

Q. What is your name? A. E. F. Prior.

Q. Where do you live?

(Testimony of E. F. Prior.)

A. Residence, 2868 Fashion Avenue, Long Beach, California.

Q. What is your business or occupation?

A. Secretary-treasurer of the California State Council of Edible Oil Workers.

Q. How long have you held that position?

A. Since July 1, 1938.

Q. Have you ever undertaken any organizational activities at the Corcoran plant of the J. G. Boswell Company? A. Yes.

Q. When did you first undertake any such activities?

A. On or about March 15 of 1938.

Q. What did those activities consist of at that time?

A. I was informed by the president of the Cotton Seed and Vegetable Oil Workers Union 21312 of Bakersfield, California, that a number of employees employed in the J. G. Boswell plant [69] at Corcoran were interested in organization.

Mr. Clark: I object to that, may it please your Honor, as hearsay.

Trial Examiner Lindsay: It may stay. You may proceed.

The Witness: And the president of that organization and myself called on Mr. O. L. Farr at his residence in Corcoran in regard to the organization of the employees of the Boswell Company.

Q. By Mr. Mouritsen: Who is O. L. Farr?

A. At that time he was employed as a ginner for the Boswell Company.

(Testimony of E. F. Prior.)

Q. Did you have a conversation relative to organizational activities at the J. G. Boswell plant with Mr. Farr? A. I did.

Q. Was anyone else present other than yourself and the other gentleman you named? A. No.

Q. Will you state what you said to Mr. Farr at that time, and what he said to you?

Mr. Clark: Just a minute, may it please the Examiner.

Objected to as hearsay and in no way binding on any of the Respondents to this proceeding. Hearsay, Mr. Farr acting as an individual, and this gentleman who is acting for his Union.

Trial Examiner Lindsay: Well, he may disclose the conver- [70] sation he had with Mr. Farr. Mr. Farr, as I understand, was employed at that Company at that time, is that right?

The Witness: That is correct.

Trial Examiner Lindsay: He may state the conversation.

The Witness: Well, of course, there was the usual introductions. The president of the Local in Bakersfield was a brother of Mr. Farr's, and generally we discussed wages and hours and conditions in effect at the J. G. Boswell plant, and generally what was Mr. Farr's opinion as to the——

Trial Examiner Lindsay (Interrupting): Tell what Mr. Farr said.

The Witness: Mr. Farr stated that it was his opinion that the employees at the J. G. Boswell plant were interested in organization.

(Testimony of E. F. Prior.)

Q. By Mr. Mouritsen: Was there any further conversation at that time?

Mr. Clark: May my objection run to this whole line of testimony without repeating the objection?

Trial Examiner Lindsay: It may. That is right.

The Witness: I asked Mr. Farr the names of the management of the J. G. Boswell Company, and was informed that Mr. Gordon Hammond was the work superintendent, and that Mr. Louis T. Robinson was the general manager; and stated that while he and his brother visited, that I would make a call at the plant and endeavor to talk to Mr. Robinson and Mr. Hammond. [71]

Q. By Mr. Mouritsen: Did you after that conversation visit the plant? A. I did.

Q. Did you meet either Mr. Robinson or Mr. Gordon Hammond? A. No.

Q. Did you make any effort to reach them?

A. I gave my card to the P. B. X. operator, and stated that I would like to see either Mr. Robinson or Mr. Hammond; and she called a young gentleman who was identified to me as the engineer, drafting engineer, for the Company, who took me through the plant looking for Mr. Hammond, and he was unable to find him; and, therefore, I did not meet Mr. Hammond on that visit.

Q. After that time, did you undertake any organizational activities with reference to the employees of the J. G. Boswell plant at Corcoran?

A. Within a week or two following that visit, I

(Testimony of E. F. Prior.)

was informed that the mill, the oil mill of the J. G. Boswell Company, had ceased operations, and no further effort was made until July 6th of 1938.

Q. What organizational activities did you undertake at that time with reference to the employees of this Corcoran plant of the J. G. Boswell Company?

A. I again called on Mr. Farr at his home on the date of July 6th, 1938, and discussed the proposition of organizing the [72] employees at the J. G. Boswell plant.

As Mr. Farr stated, a number of the employees felt that the Company was opposed to organization, and together we worked out a plan of sending invitations to each employee in the plant as nearly as possible, calling a meeting here in Corcoran, if it was possible to secure a meeting place.

And he gave me a list of some 30 names of employees in the plant, and arrangements for a hall was made; and I informed him that there would be a meeting called for July 13th. [73]

Q. Did you send invitations to the meeting out to the employees whose names were given you by Mr. Farr? A. I did.

Q. Did you hold the meeting on July 13, 1938?

A. Yes.

Q. Where was it held?

A. It was held in the American Legion Hall at Corcoran.

Q. Did you attend the meeting? A. I did.

Q. Did you take any part in the meeting?

(Testimony of E. F. Prior.)

A. Yes.

Q. What did you do at that meeting?

A. Well, I was the only representative of the American Federation of Labor present, and was more or less looked to as being in charge of the meeting.

Q. Were there any other people present at the meeting? A. Yes.

Q. How many, approximately?

A. Approximately 6 or 8.

Q. Did you know the names of any of the men who attended the meeting?

A. I had never met any of them before the meeting.

Q. Did you during the course of the meeting ascertain the names of any of those present?

A. Yes. [74]

Q. Will you give the names of the men that you met during the course of the evening whose names you learned?

A. To the best of my recollection there was one Frank Gonders, Bill Robinson, Clyde Sitten, Jack Owens, a gentleman by the name of Weatherby whose initials I don't know, and another gentleman by the name of Gilmore.

Q. Now, what transpired at the meeting so far as you were concerned?

A. I explained the purpose of the meeting first and in as much as there was a small number, I told them it all might as well be informal and I would

(Testimony of E. F. Prior.)

try to answer any questions that they might have relative to self-organization; and was informed particularly by Mr. Gonders that the employees of the Boswell Company were one happy family, that they were very well satisfied with 35 and 50 cents per hour, and that they really wanted no organization in the plant.

Q. After the meeting was over did you talk with any of the other men who attended the meeting?

A. Yes.

Q. With which of the men who attended the meeting? A. With Mr. Gilmore.

Q. Where did you have a conversation with him?

A. In one of the beer parlors here in Corcoran.

Q. Other than yourself and Mr. Gilmore was anyone else present? [75]

A. Mr. Weatherby was present.

Q. Did he take any part in the conversation?

A. Not to any extent.

Q. Now, what did you say to Mr. Gilmore and what did he say to you?

Mr. Clark: Just so we may be sure, it is the last time I will repeat it, any objection to this as being hearsay runs to all of these conversations, I take it, to any employees of Boswell and Company.

I already have your Honor's assurance that it runs to the testimony originally started between Farr and this gentlemen, but now we are into certain others and I want it understood that I am objecting to all of this testimony on the ground it is

(Testimony of E. F. Prior.)

hearsay and not binding on any of these respondents.

Mr. Wingrove: I would like to have it noted in the record the same objection as to the respondents I represent.

Trial Examiner Lindsay: Yes.

Who is Mr. Gilmore?

The Witness: (Pause).

Trial Examiner Lindsay: If you know.

The Witness: A former employee at the Boswell Company.

Mr. Clark: Was he at that time?

The Witness: Yes.

Mr. Clark: He was employed at that time? [76]

The Witness: Had been previously employed to that date.

Mr. Clark: Well, I will object to that on the further ground it is incompetent, irrelevant and immaterial what Mr. Gilmore had to say about it. He wasn't even employed by the company.

Trial Examiner Lindsay: He may answer and you may have an exception.

The Witness: What was the question?

(The question referred to was read by the reporter, as set forth above.)

The Witness: If the Trial Examiner please, there is possibly a background of an interposing conversation between there that will connect the conversation had.

Trial Examiner Lindsay: Well, you may tell

(Testimony of E. F. Prior.)

what was said at this time and if your attorney wants to go into that, he may ask the question.

Mr. Clark: Which conversation is it we are getting now?

Trial Examiner Lindsay: The one in the beer garden, is that right?

The Witness: Yes.

Mr. Gilmore informed me that the majority of the group present up at the Legion Hall were not representing and speaking for the majority of the employees at the Boswell plant; that he had during the past week and on that day talked with a number of them, asked a number of them if they were going to [77] attend the meeting; and he had been informed that they were not attending the meeting because the company was opposed to any organization.

He told me he had not been re-employed when the plant had started up on July 1st and that Mr. Hammond had been very indefinite as to any future employment with the J. G. Boswell Company. [78]

Q. (By Mr. Mouritsen): With respect to the Corcoran plant of the J. G. Boswell Company, what organization—when did you next undertake any organizational activities with reference to its employees? A. When was the next efforts made?

Q. That is correct.

A. The next effort made to organize the employees—

Mr. Clark (Interrupting): Just a minute. I

(Testimony of E. F. Prior.)

move that go out as not responsive, the next effort as made to organize the employees. There hasn't been any made yet that I have heard.

Assuming something not in evidence. All we have had is the conversation between Mr. Gilmore who wasn't even employed at the Company.

Trial Examiner Lindsay: He may tell what he next did.

The Witness: I next filed charges known as an 8-1 charge violating—alleging an unfair labor practice of the National Labor Relations Board with the 21st Region of the National Labor Relations Board.

Q. (By Mr. Mouritsen): Where is the office of that? A. The office of the 21st Region?

Q. No. Where is the office located; the office of the National Labor Relations Board where you filed the charges?

A. At that time, it was in the Pacific Electric Building, Room 745, Los Angeles, California.

Q. And about on what date did you file those charges? [79]

A. Those charges were filed on or about July 8th—no, on or about July 17th.

Q. And what organizational activities did you undertake next with reference to the employees of the J. G. Boswell Company plant in Corcoran?

A. September 2, 1938.

Q. And of what did those organizational activities consist?

(Testimony of E. F. Prior.)

A. A conversation with Mr. O. L. Farr and a Mr. R. K. Martin and a Mr. H. N. Wingo.

Q. Where did that conversation take place?

A. At Mr. Farr's residence in Corcoran.

Q. Now, will you state generally what you said to them, and what they said to you, just the gist of the conversation, if that is satisfactory?

Mr. Clark: Subject to the objection I made.

Trial Examiner Lindsay: Yes.

Mr. Clark: It is not satisfactory.

Trial Examiner Lindsay: All right. You may tell all of the conversation that you remember.

The Witness: Well, the three of them expressed a desire for organization. I explained——

Mr. Clark (Interrupting): Just a minute. May it please your Honor, if we are going to have this hearsay, may we have it in substance what was said?

Trial Examiner Lindsay: Yes. [80]

Mr. Clark: May that statement go out as expressing a desire of this and that?

Trial Examiner Lindsay: Yes.

Q. (By Mr. Mouritsen): State as nearly as you can recall it, what you said to the men and what they said to you?

A. Mr. Farr, as near as I can recall, stated that the wages paid at the Boswell plant were entirely too low, and Mr. Martin stated that 40 cents an hour for expeller operators, particularly when other operators doing the same work were receiving a

(Testimony of E. F. Prior.)

higher rate of pay, was entirely too low for that type of work. And they all three stated that the hours were too long.

Q. At that time did they do anything further with reference to the Union? A. Yes.

Q. What did they do?

A. They turned applications for membership in the Union.

Q. At or about that time, did you have any conversation with any of the supervisory employees of the J. G. Boswell Company at the plant?

Mr. Clark: Objected to as calling for a conclusion of the witness as to what the supervisory employees are. May I suggest that the witness state the name, if anyone, that he had a conversation with, and proof be had?

Mr. Mouritsen: I withdraw the question.

Q. At or about that time, did you have any conference with [81] any of the other employees of the J. G. Boswell Company? A. (Pause.)

Mr. Clark: I want it understood that these objections are being made on behalf of all Respondents. May the record so show?

Trial Examiner Lindsay: Yes.

The Witness: As I remember, it was the afternoon of that same—or sometime during the day of that same day, September 2nd, that I talked to Mr. Louis Robinson, Mr. Gordon Hammond and Mr. William Boswell.

Q. (By Mr. Mouritsen): Now, where did that conference take place?

(Testimony of E. F. Prior.)

A. In one of the offices in the office building of the J. G. Boswell Company at Corcoran.

Mr. Clark: May we have the date, please?

Trial Examiner Lindsay: September 2nd.

Mr. Clark: Yes.

Q. By Mr. Mouritsen: Do you have any knowledge of the positions held by Louis Robinson, Mr. Gordon Hammond, or Mr. William Boswell with the J. G. Boswell Company?

A. I have been told by other employees of the Company—

Mr. Clark (Interrupting): Let us have Mr. Robinson's statement on that, and we will have it in the record, your Honor, as to what positions these men actually hold, without taking somebody's guess on it. [82]

Trial Examiner Lindsay: He may proceed and answer the question.

The Witness: I had been told that Mr. Robinson was the general manager of the plant here, by employees of the plant, and that Mr. Gordon Hammond was the works' superintendent.

Q. By Mr. Mouritsen: Did you have any knowledge with reference to the position Mr. William Boswell had with the plant at that time?

A. None other than that he carried the same name as the Company.

Q. Now, where did this conversation take place?

A. In one of the office rooms of the office building of the Corcoran J. G. Boswell plant.

(Testimony of E. F. Prior.)

Q. Yes.

Now, will you state what you said at this conference, and what each of the individuals said, if they said anything, at that conference?

A. I stated that the Union had filed the charge with the Labor Relations Board, and that possibly there was misunderstandings between the employer, also the employees, as to what the exact policies of the Union were, the purposes of the Union, and that I would be very glad to discuss them with them.

Mr. Robinson suggested that I consider him as just any ordinary citizen and assume for the part of the conversation that he was not in any way connected with the management of [83] the J. G. Boswell Company. And he asked several questions, all of them I cannot at this time recall. One statement I do recall was that if he were organizing the plant, that he would endeavor to organize the key men of the plant and not just a few more or less radical, ignorant, casual workers, part time workers.

I stated that Mr. Robinson was probably surprised to know that there were a number of men who had been steadily on his payroll, and that he—evidently were considered as full time permanent employees of the plant, and asked him—I recall I put it this way: I said, “Let us deal with facts so that we both know exactly what we are talking about in referring to the part time labor and those that are only employed occasionally by the Company. Are you referring to Mr. Gilmore?”

(Testimony of E. F. Prior.)

And he stated he was.

Q. Do you recall any other conversation that was had at that time?

A. Well, Mr. Robinson stated that the Company was paying all of the wages that they thought they could afford; that they had always taken an attitude of being good to their employees; and that their employees over a period of time had always returned for employment at the plant.

Q. Was that about the end of the conversation?

A. As near as I can recall.

Q. Yes. [84]

Now, when next did you undertake any organizational activities with reference to the employees of the Corcoran plant of the Company?

A. It was on or about October the 7th.

Q. What year? A. 1938.

Q. And of what did your organizational activities consist at that time.

A. We—the three men, Mr. Farr, Mr. Martin and Mr. Wingo—

Q. (Interrupting): May I interrupt here?

Concerning these men, did you know whether they were employed at this time and at the time of your prior conversation with them?

A. I knew at the time of the prior conversation that they were employed.

Q. And where were they employed?

A. At the J. G. Boswell plant.

Q. At the time of this conversation, did you know whether or not they were employed?

(Testimony of E. F. Prior.)

A. I wish to correct that statement in that Mr. Farr was not present on the date of October 7th, 1938.

Q. Do you know whether the other two were employed at that time?

A. Mr. Wingo was employed at that time.

Q. And where?

A. At the J. G. Boswell plant. [85]

Q. (By Mr. Mouritsen): Now, will you give the conversation you had on or about October 7th?

A. It was with Mr. Martin, Mr. Wingo; Mr. George Andrade was in attendance, and I was informed that the oil mill had shut down on or about September 27th.

Q. Of what year?

A. Of 1938; and that they were informed that George Andrade, R. K. Martin, Boyd Ely and O. L. Farr would not be re-employed at the J. G. Boswell plant.

Q. Do you recall which of the employees or which of the men with whom you talked gave you that information?

A. Mr. Martin and Mr. Andrade.

Q. Was anything further said?

A. I asked them the length of their service, the operations that they had performed at the plant, what their duties were, and if there were other men younger in length of service with the J. G. Boswell Company than they were still employed at the company. They informed me that there was.

(Testimony of E. F. Prior.)

Q. Did you have any further conversation at that time with these men that you have named?

A. Not that I recall.

Q. With respect to these men, did you undertake or did you hold a conference with the company? A. Yes.

Q. Or with any representative of the company? [86]

When was that conference held?

A. The following day on October 8, 1938.

Q. Where was the conference held?

A. In one of the—the northeast office room of the office building of the J. G. Boswell plant at Corcoran.

Q. Were any representatives of the company present? A. Mr. Gordon Hammond.

Q. Were any of these men that you named present? A. No.

Q. Was anyone present other than you and Mr. Boswell—Mr. Hammond? A. No.

Q. Will you state the conversation that was had between yourself and Mr. Hammond at that time?

A. Well, I told Mr. Hammond that I had been informed that these men had been laid off and the oil mill shut down and that they had the understanding that there seemed to be a current rumor around town that these men would not be re-employed because of their activities on behalf of the union.

I explained to Mr. Hammond that it has been my

(Testimony of E. F. Prior.)

experience quite often that a lot of these things were misunderstandings and that there was no doubt rumors floating around on both sides.

I mentioned some other cases that we had had to go before the Labor Relations Board on and told him that I would be [87] very glad and very anxious to help cooperate in any way possible to clear up any misunderstandings that there might be.

So we had a discussion in regard to these four men and four other men who had not been re-employed. Their names I don't recall. It was pointed out the reason the other four men had not been re-employed was that there was no part of the plant operating that they had ever worked in before or had experience in but that had these other men applied for employment that they would have placed them back on.

Mr. Clark: Who said this?

The Witness: Mr. Gordon Hammond.

Mr. Clark: Gordon Hammond said that, that if the other men had applied, he would place them back on?

Mr. Mouritzen: Let me clear this up.

Q. To which men did he refer when he said if they applied they would have been put on?

Mr. Clark: As you understood it.

The Witness: Mr. R. K. Martin, Boyd Ely, O. L. Farr, and George Andrade.

Mr. Clark: Being the four you were interested in? The Witness: Yes.

(Testimony of E. F. Prior.)

Q. (By Mr. Mouritsen): Continue.

A. I told Mr. Hammond I would be very glad to explain to the men that in all probability there was a misunderstanding and notify them that if they applied to him that they would be [88] put back to work, and that, in substance, ended the conversation.

I also told Mr. Hammond that I would call on him the following week to learn if there were any further misunderstandings and if there was, if there was any way I could cooperate with both the management and the men in helping to keep down any rumors, that I would do so.

Q. Now, after that conference of October 7, 1938, do you know of your own knowledge whether any of these men were returned to work?

A. After I left Mr. Hammond's office, I droye to Mr. Martin's home and he accompanied me in my car out to Mr. Andrade's house. While I was telling Mr. Andrade that if he reported to the plant, Mr. Hammond would be very glad to put him on, a gentleman identified to me by Mr. Andrade and Mr. Farr as a brother of Mr. Gordon Hammond, came up and notified Mr. Andrade to report to work that afternoon.

The next information I had of their reporting to work was a letter dated on or about October 11th from Mr. R. K. Martin stating that he had returned to work that day, or the day previous. I don't recall now exactly which.

(Testimony of E. F. Prior.)

Q. Now, after that date of approximately October 7, 1938, what organizational activities did you undertake next with reference to employees of the Corcoran plant of J. G. Boswell Company? [89]

Mr. Clark: If any.

Mr. Mouritsen: Yes.

The Witness: It was arranged on October 7, 1938, to have a meeting of as many employees as possible——

Mr. Clark (Interrupting): May I interrupt, your Honor. May I ask that that go out, as the answer is not responsive, and then we can get the correct information so far as the arrangements. He said it was arranged and we don't know by whom. It is not responsive to this last question.

Trial Examiner Lindsay: Yes. It may go out.

Mr. Clark: Let us find out about it.

The Witness: Mr. R. K. Martin stated that he would call a meeting of all of the employees who had signed applications for membership in the union for the following Saturday, October 15, 1938.

Q. (By Mr. Mouritsen): And was such a meeting held? A. Yes.

Q. Was it held? A. Yes.

Q. Where was it held?

A. In Mr. R. K. Martin's residence in Corcoran.

Q. When was it held?

A. In the evening at approximately 8:30 it started.

Q. Well, what was the date?

(Testimony of E. F. Prior.)

A. October 15, 1938. [90]

Q. And who were present that you knew?

A. Mr. R. K. Martin, Mr. O. L. Farr, George Andrade, and I believe Mr. L. A. Spear. Those are all I recall that were there; at this time.

Q. What was done at this meeting of October 15, 1938?

A. Mr. Martin made a report on the number of applications signed and reported that it was impossible to have a very large attendance at the meeting at that time due to the exceptionally long hours, sometimes in excess of 16 hours a day, being worked by the employees and that that was the reason there had not been more employees out at the meeting; and that every one, that is, of the four men previously mentioned, had been placed back to work and that there was a keen response being shown toward the organization.

Mr. Clark: Of course, there is no necessity of my repeating that objection, your Honor? It is understood?

Trial Examiner Lindsay: That is up to you, Mr. Attorney.

Mr. Clark: It is understood, isn't it, that my objection on the ground of hearsay is running to all these conversations?

Trial Examiner Lindsay: So you stated, and I granted it, but still if you are not satisfied you may further object.

Mr. Clark: May I have that stipulation, counsel, that so far as conversations——

(Testimony of E. F. Prior.)

Trial Examiner Lindsay (Interrupting): Just a moment. It isn't necessary for a stipulation. I granted it, did I not? [91]

Mr. Clark: Then you added if I thought that it was not enough I could repeat it. I don't want to repeat it if I am safe on the record. That is why I asked counsel for a stipulation.

Trial Examiner Lindsay: You are safe if the record reads correctly.

Mr. Clark: I think so too, but I get uneasy out here with too many conversations.

Trial Examiner Lindsay: Any time you get uneasy, just make the objection and I will rule on it again.

Mr. Clark: I would like to object now, then, upon the ground of hearsay so far as this conversation is concerned.

Trial Examiner Lindsay: All right. Then it will not be necessary to constantly argue back and forth about it. Go ahead and make your objection and I will rule on it.

You may answer. You may have an exception.

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen): Does that complete your answer? A. Yes.

Trial Examiner Lindsay: Now, I may state that your objection came in after the question had been answered so, in fact——

Mr. Clark (Interrupting): I have no business

(Testimony of E. F. Prior.)

making that objection so far as this conversation is concerned. [92]

Trial Examiner Lindsay: You have a right to make a motion to strike.

Mr. Clark: I am simply calling your attention to the fact that I made the objection, you see, and I was asking your Honor again whether it was understood that my hearsay objection was running toward this line of testimony.

Trial Examiner Lindsay: Yes.

Mr. Clark: All conversations between this gentleman and employees of the company.

Trial Examiner Lindsay: Now, as to the last answer, do you want a motion to strike?

Mr. Clark: I will move to strike it on the same ground.

Trial Examiner Lindsay: The motion is denied. You may have an exception.

Q. (By Mr. Mouritsen): Now, after October 15, 1938, did you from time to time attend union meetings at which were present employees of the J. G. Boswell Company?

A. Not until November 5th of 1938.

Q. And where was that meeting held?

A. At the residence of Mr. O. L. Farr in Corcoran.

Q. Now, with reference to the local union, what action was taken at that meeting?

Mr. Clark: I object upon the ground of no foundation being laid. I suggest we have the persons present and the time and place. [93]

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: The place is in and the date. The meeting was held on November 5, 1938, at the home of Mr. Farr.

Is that correct?

The Witness: Correct.

Trial Examiner Lindsay: Now the question is, who was present.

Does that cover it?

Mr. Clark: Yes, your Honor.

The Witness: I cannot recall all that were present. I know Mr. R. K. Martin, George Andrade, Mr. L. A. Spear, O. L. Farr, and Mr. C. E. Powell—I think those are the correct initials—Elmer Eller and a number of others were in attendance at that meeting, whose names I cannot recall.

Q. (By Mr. Mouritsen): At that time was anything done with reference to the formation of a local union affiliated with the American Federation of Labor? A. Yes.

Q. The answer to that is yes? A. Yes.

Q. Now, what was done with reference——

Mr. Clark (Interrupting): Just a minute——

Trial Examiner Lindsay (Interrupting): Just a minute. He had already answered.

Mr. Clark: I am sorry. I didn't hear. I thought that [94] was counsel anticipating. I am sure you knew the answer would be yes, anyway.

Trial Examiner Lindsay: Now, just a minute. Let us not get into that sort of thing.

Q. (By Mr. Mouritsen): With reference to the

(Testimony of E. F. Prior.)

formation of a local, what was done at that meeting?

A. A charter of the American Federation of Labor, known as the Cotton Products and Grain Mill Workers Local No. 21798 of Corcoran and vicinity, California, was installed to a group of employees of the J. G. Boswell Company.

Mr. Mouritsen: Might this be marked for identification, Mr. Examiner, as Board's Exhibit 4?

Mr. Clark: May I see it?

(Thereupon the document above referred to was received and marked as Board's Exhibit 4 for identification.)

(The document referred to was passed to Mr. Clark.)

Trial Examiner Lindsay: Off the record. [95]

(Discussion outside the record.)

Trial Examiner Lindsay: On the record.

Q. (By Mr. Mouritsen): Now, Mr. Prior, I show you a document that has been marked Board's Exhibit 4 for identification, and ask you if you have ever seen that document before?

A. (Examining document): Yes.

Q. Will you identify that document for us?

A. It is a certificate of affiliation of the American Federation of Labor, granted to the Cotton Products and Grain Mill Workers' Union, Local No. 21798, Corcoran, California.

Q. You said something with reference to a char-

(Testimony of E. F. Prior.)

ter at this meeting of November 5th, 1938, I believe.

I ask you whether or not that charter is the document which you now hold in your hands, and which has been marked Board's Exhibit 4 for identification? A. Yes.

Q. Do you know who made application for that charter?

A. Mr. O. L. Farr, H. M. Wingo, George J. Andrade, R. K. Martin, L. A. Spear, Peter Galvan, G-a-l-v-a-n, Emanuel Escabedo, E-s-c-a-b-e-d-o.

Q. As a physical matter, do you know who sent, or who made application to the American Federation of Labor for the charter that has been marked Board's Exhibit 4? A. Yes.

Q. Who did that? [96]

A. I did that.

Q. And how was that done?

A. By letter setting forth the names of the employees of the Boswell plant to be named on the charter.

Q. To whom did you address the letter?

A. To Edward Vandeleur, Secretary-Treasurer of the California State Council and representative of the American Federation of Labor.

Q. Did you deposit that letter in the mails in the regular manner? A. Air mail, yes.

Q. And did you subsequently receive this document through the mail? A. Yes.

Q. From whom did you receive it, if you know?

A. Sent to me by Mr. Vandeleur.

(Testimony of E. F. Prior.)

Mr. Mouritsen: At this time, Mr. Examiner, I offer Board's Exhibit 4, the document that has been marked Board's 4 for identification.

Mr. Clark: May I have the privilege of asking one or two questions concerning that?

Trial Examiner Lindsay: Yes.

Mr. Clark: Before it is admitted?

Voir Dire Examination

Q. (By Mr. Clark): Mr. Prior, I notice this document is dated [97] October 26th, 1938?

A. Yes.

Q. And contains, under the legend "Certificate of Affiliation," certain names consisting in all of seven names that you have given us?

A. Yes.

Q. Will you please state whether that was the entire membership of this Union on that date?

Mr. Mouritsen: I object to that as incompetent, irrelevant and immaterial——

Mr. Clark (Interrupting): I will submit it.

Mr. Mouritsen (Continuing): ——it doesn't tend to prove or disprove the issues in the matter.

Mr. Clark: What?

Trial Examiner Lindsay: Just a moment.

Now, first of all, there is not an 8 (5) charge, and neither is there an 8 (5) violation named in the complaint and therefore the question of membership does not enter into it.

Mr. Clark: It goes to the authenticity and probability of this document, your Honor. The question is

(Testimony of E. F. Prior.)

as to the men supposed to have been members, whether they were or were not, or whether they were employed by the Company.

Trial Examiner Lindsay: That was not your question.

Mr. Clark: I will reframe it, then. [98]

Q. Mr. Prior, by the insertion of these seven names on this Exhibit, was it intended to set forth the membership of your Union on that date?

A. No.

Q. It was not.

What do these names indicate?

A. They indicate the number of names that were submitted to the American Federation of Labor as applying for the charter, and not less—the charter will not be issued to less than seven.

Q. All right.

And were those names submitted to the American Federation of Labor as being members of the proposed Union? A. Yes.

Q. And as being employees on that date of Boswell and Company? A. No.

Q. And did those names so submitted purport to be the entire membership of the Union?

A. No.

Mr. Mouritsen: I move to strike.

Q. (By Mr. Clark): Was it in fact—may I have the ruling?

Trial Examiner Lindsay: It may stay in.

Q. (By Mr. Clark): Did those names, in fact,

(Testimony of E. F. Prior.)

constitute the entire membership of the Union on that day, namely, October [99] 26th, 1938?

Mr. Mouritsen: I object to the question——

Mr. Clark (Interrupting): Submit it——

Mr. Mouritsen (Continuing): ——on the ground it is incompetent, irrelevant and immaterial, and does not tend to prove or disprove the issues in the matter.

Trial Examiner Lindsay: Sustained.

Mr. Clark: No further questions,—just one further one, your Honor.

Q. Do you know how many employees there were in the Boswell plant on that day?

A. No.

Q. Do you know whether there were more than 100? A. No.

Mr. Clark: May it please your Honor, it is 4:30. I understood that was the hour set for adjournment. I wonder if I might ask for an adjournment at this time?

Mr. Mouritsen: Before we do adjourn, Mr. Examiner, I believe we had not had a ruling on Board's Exhibit 4 for identification. I think that the record would perhaps be clearer if we could.

Mr. Clark: Which is that?

Trial Examiner Lindsay: The one that was offered. I haven't received it yet.

Mr. Clark: I see. [100]

There is no objection.

Trial Examiner Lindsay: Board's Exhibit 4 received in evidence.

(Thereupon, the document above referred to was received in evidence and marked as Board's Exhibit No. 4.)

Trial Examiner Lindsay: We will adjourn until 9:30 in the morning.

(Whereupon, at 4:35 o'clock P. M., May 18, 1939, the hearing was adjourned to 9:30 o'clock A. M., Friday, May 19, 1939.) [101]

Women's Hall
Corcoran, California
Friday, May 19, 1939 [102]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Clark: The Respondents are ready.

Mr. Mouritsen: Ready for the Board.

Mr. Examiner, in checking through the list of—

Mr. Wingrove (Interrupting): May I interrupt just a moment with the Examiner's permission?

Mr. Examiner, I am going to ask for something that I really hate to do, and that is to put on a witness out of order for the Respondent, J. G. Boswell Company. We have a witness who is District Attorney of this County. His testimony will be very short, and the purpose of his testimony will be to show that a committee of the Boswell Company employees called upon him and asked for his advice

as to what they should do, and he advised them that they had a right to form an employees' association, and advised them generally concerning the matter, who they should go to to find out about the matter, and Mr. Walch, the District Attorney, I found out after the complaint had been served—the amended complaint had been served—had already made definite arrangements and had a leave of absence to go back East for about a month, and he is expecting to go tomorrow or the day following, and this will be the only opportunity to put him on the stand unless we take his deposition later.

Trial Examiner Lindsay: If it is agreeable to counsel for [104] the Board, it is agreeable to me.

Mr. Wingrove: I suggest that this afternoon would be agreeable to have him here.

Mr. Mouritsen: I would be happy to cooperate in that respect, Mr. Examiner.

Trial Examiner Lindsay: All right.

Mr. Mouritsen: In checking through the formal file and the transcript of yesterday, Mr. Examiner, I note that I failed to introduce in evidence the third amended charge. I therefore offer as Board's Exhibit 1-F the third amended charge filed in this matter, the jurat of which bears date March 4th, 1939.

Trial Examiner Lindsay: Have you seen the third amended charge?

Mr. Clark: I haven't seen it—yes, I have a copy of it, your Honor. It was served on us.

I think a copy of it did go in yesterday, and it

was next to an affidavit of mailing, wasn't it?

Mr. Mouritsen: No, I think the transcript fails to indicate it was introduced at all.

Trial Examiner Lindsay: It may be received.

(Thereupon, the document above referred to was received in evidence and marked as Board's Exhibit No. 1-F.)

Mr. Mouritsen: Mr. Prior.

E. F. PRIOR,

the witness on the stand at the time of adjournment, resumed [105] the stand and was further examined and testified as follows:

Direct Examination

(Continued)

Q. (By Mr. Mouritsen): Now, Mr. Prior, when you were on the stand yesterday afternoon, I believe that you last testified about a meeting of the Union at which the charter was installed?

A. Yes.

Q. Does—are you acquainted with the objectives and purposes of the Cotton Products and Grain Mill Workers' Union, Local 21798? A. Yes.

Q. Will you state what the objectives and purposes of the Local are?

May it be understood that hereafter when I refer to the Local, I am referring to the Cotton Products and Grain Mill Workers' Union, Local 21798?

Mr. Clark: Oh, yes, surely.

I will object, however, to the question upon the

(Testimony of E. F. Prior.)

ground that the charter or by-laws of the organization is the best evidence as to the objectives and purposes. This gentleman isn't even qualified as being a member of it.

Trial Examiner Lindsay: He may answer.

The Witness: The objects—could I have the question?

(The question referred to was read by the reporter as set forth above.) [106]

Mr. Clark: Just so we may clear this, this Local is the one for which the charter was put in evidence yesterday, isn't that true?

Mr. Mouritsen: That is true.

Mr. Clark: Very well. That will be referred to as the Local from now on.

Mr. Mouritsen: That is correct.

Mr. Clark: So agreed.

The Witness: The purposes of the Local are to organize employees in the industry for which the American Federation of Labor has granted them jurisdiction, which is stated and defined on the charter, and for the purpose of collective bargaining between the Local and the employers whose employees come under the jurisdiction of their charter.

Mr. Clark: I move to strike it out, may it please your Honor, on the ground of the objection previously made, and upon the further ground that it is self-serving and not binding in any way upon any of the Respondents.

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: It may stand. You may have an exception. [107]

Q. (By Mr. Mouritsen): Are you acquainted with the matters—strike that.

Do the employees participate in the activities of the local? A. Yes.

Q. In what manner?

A. They elect their own—

Mr. Clark (Interrupting): Just one moment, your Honor. I will object to that on the ground it is vague and indefinite. The employees are not identified. I assume this organization has members. I tried to bring that out yesterday, and those people are all that we can possibly be concerned with in this case; and more particularly, may it please the Examiner, we are only concerned with the employees of the Boswell Company, that being one of the respondents.

Trial Examiner Lindsay: I believe the question is calling for a history of the organization of the local and its purposes.

He may go into that. You may have an exception.

The Witness: Will you read the question?

(The question referred to was read by the reporter, as set forth above.)

The Witness: They elect their own officers, set up their own constitution and by-laws, subject to approval of the American Federation of Labor, and

(Testimony of E. F. Prior.)

act upon all matters [108] affecting the membership of the organization.

Q. (By Mr. Mouritsen): Has this particular local any committees? A. Yes.

Q. What committees has the local, either appointed or elected?

Mr. Clark: Now, it may be deemed, your Honor, that the objections already made run to this whole line of testimony and I won't interrupt any more.

Trial Examiner Lindsay: Yes.

The Witness: There is a standing committee composed of the elective officers known as the Executive Board of the local.

Q. (By Mr. Mouritsen): Are there any other committees? A. No.

Mr. Mouritsen: May this be marked Board's Exhibit 5 for identification?

(Thereupon the document above referred to was received and marked as Board's Exhibit 5 for identification.)

(The document referred to was passed to counsel.)

Mr. Clark: Isn't there a supplement to that, counsel? Hasn't there been amendments to the American Federation of Labor by-laws?

Mr. Mouritsen: I will have to ask the witness.

Mr. Clark: Otherwise I have no objection to the authenticity. [109]

Q. (By Mr. Mouritsen): Does this particular local have any constitution or by-laws of its own?

(Testimony of E. F. Prior.)

A. No.

Q. Does it operate under any constitution or by-laws of the American Federation of Labor?

A. Yes, sir.

Q. Is this particular local affiliated with any International of the American Federation of Labor? A. No.

Q. What is the type—strike that.

Will you describe the type of local that this local is?

A. The Cotton Products and Grain Mill Workers' Union, Local No. 21798 is known as a directly affiliated local union with the American Federation of Labor.

Q. Now, at this time, Mr. Prior, I show you a document that has been marked Board's Exhibit 5 for identification, and ask you if you have seen that before.

A. (Examining document): Yes.

Q. Will you explain just what Board's Exhibit 5 for identification is?

A. It is the constitution of the American Federation of Labor as amended at the Denver, Colorado, convention, October 4 to 15 inclusive, 1937.

Q. Has there been any more recent amendments to the constitution of the American Federation of Labor that is contained in [110] Board's Exhibit 5?

A. As I recall, there were amendments, and I know that a new constitution was issued in the year—after the convention of 1938. [111]

(Testimony of E. F. Prior.)

Q. I will ask you if the Local in this instance was operating under these provisions of the Constitution of the American Federation of Labor in October, November, December of 1938, and in 1939 to date?

Mr. Clark: I will object to that, may it please the Examiner, on the ground that the witness has told us that a new Constitution was issued containing amendments which are not in the document shown him, and that it is immaterial, therefore, whether this Local was operating under some outmoded constitution or not.

I am perfectly willing for that to go in evidence subject to the engagement of counsel to produce the amendments or any new form of constitution that has been issued.

I know there was one; that is why I raised the question.

Trial Examiner Lindsay: I was just wondering myself whether it isn't a general proposition that anyone operating under a certain formula or set of laws or by-laws or constitution continues to operate until the new by-laws or the new constitution are served upon them and they are instructed to operate under them.

Now, I would like to know which one they are operating under, and I believe that he may answer the question.

Mr. Clark: I don't think—if I may just press the argument a bit further, your Honor—I don't

(Testimony of E. F. Prior.)

think it lies in the mouth of this witness to tell us which constitution of the [112] American Federation of Labor is properly applicable to this organization. We have in evidence a charter from the American Federation of Labor, and I take it that the constitution that is effective so far as that organization is concerned, is the one that governs this Local; and I am saying that that is the Constitution that ought to be offered in evidence. And I object to this witness telling us that this local operated for any time under a prior set of laws if they have been substituted for by a new set.

Trial Examiner Lindsay: This gentleman should know. He helped to organize the Local here, as I understand from his testimony, and was quite active in it from its inception right through.

I believe that the answer may go in.

The Witness: What was the question?

(The question referred to was read by the reporter as set forth above.)

Mr. Clark: Now, for the record, the same objection.

Trial Examiner Lindsay: He may answer, and you may have an exception.

The Witness: At the installation of the Charter of the Local, the amendments of the Constitution as adopted in the convention of the American Federation of Labor in 1938 had not yet been printed, and these, a number of these constitutions were is-

(Testimony of E. F. Prior.)

sued with the charter to the Local; and they are subse- [113] quently notified by letter from the American Federation of Labor of any changes affecting their particular organization that had been adopted by the 1938 convention.

Q. (By Mr. Mouritsen): Of the—strike that.

How long after the installation of the charter was it before you were notified, or received printed copies of the new changes made in the '38 convention?

A. I couldn't say definitely as to the date of that. All of the Federal Locals are notified of them, and we take it more or less as a matter of course. They are read, noted and filed, and the minutes, for reference.

Q. And is this particular Local you designated a Federal local? A. Correct.

Q. Do you have available any copies of the Constitution of the American Federation of Labor which embody the changes made at the 1938 convention of the American Federation of Labor?

A. I could supply one tomorrow morning, or not later than Monday.

Q. Will you please do that? A. Yes.

Mr. Mouritsen: At this time, Mr. Examiner, I offer as Board's Exhibit 5 the document which has been marked Board's Exhibit 5 for identification.

Mr. Clark: There is no objection to that, upon the con- [114] dition, may it please the Examiner, that as part of that Exhibit there will also be made part of this record the new constitution and by-laws testified to by this witness.

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: We will reserve Exhibit Number 6 for that purpose.

Mr. Mouritsen: That will be satisfactory.

Mr. Clark: That will be produced sometime during the hearing.

(Thereupon, the document above referred to was received in evidence and marked as Board's Exhibit No. 5.) [115]

Q. (By Mr. Mouritsen): After the meeting of the local on November 5, 1938, when did you next attend any meetings of the local, if any?

A. On October 16, 1938.

Q. Where was this meeting held?

A. At the residence of O. L. Farr in Coreoran.

Q. Who were present at that meeting of the local?

A. Well, Mr. L. A. Spear, Mr. O. L. Farr, R. K. Martin that I recall, and a number of others, approximately 20 other men.

Q. At that meeting or prior to that meeting had any officers of the local been elected?

A. Yes.

Q. When was that done?

A. At the meeting of November 5, the installation of the charter.

Q. Do you know who were elected officers of the local at the November 5 meeting?

A. Mr. L. A. Spear was elected president, Mr. O. L. Farr was elected vice-president, Mr. R. K.

(Testimony of E. F. Prior.)

Martin was elected secretary-treasurer, and who were the board of trustees and the other officers, I do not now remember.

Q. Were L. A. Spear, R. K. Martin, and O. L. Farr at that time employees of the Boswell Company, to your knowledge? A. Yes.

Mr. Clark: That is objected to — well —
(Pause) [116]

Q. (By Mr. Mouritsen): Now, returning to the meeting of November 16, 1938——

Mr. Clark (Interrupting): That date is November and not October, I take it?

Trial Examiner Lindsay: We are talking about two different meetings.

Mr. Clark: He first said this was October 16 and then he kept referring to November 5, and he now—I now understand it is November 16. Is that correct?

Trial Examiner Lindsay: I don't understand it that way. I understand that the meeting of November 5 was the one at which the election of officers took place. Now am I correct on that?

The Witness: That is correct.

Trial Examiner Lindsay: That is correct. Now then, this other meeting you are talking about is a different meeting.

Mr. Clark: I understand that.

Trial Examiner Lindsay: He isn't referring to first one and then the other, one meeting of different dates.

(Testimony of E. F. Prior.)

Mr. Clark: Earlier in this witness' testimony, Mr. Examiner, he referred to a meeting of October 16th. I think it was a slip of the tongue and then he said that prior to that date on November 5 this and that happened. Now he comes back and refers to the November 16 meeting. Now as I under- [117] stand it, there are only two meetings that we are discussing at this time, one on November 5 at which the officers were elected and then one on November 16 concerning which you are now telling us.

Is that true?

The Witness: That is in reference to the testimony of this morning.

Mr. Clark: That you are giving now. If the record shows October 16, that is wrong?

The Witness: It should have been November 16.

Mr. Clark: All right.

Q. (By Mr. Mouritsen): Now, returning again to the meeting of November 16, 1938, which I believe you stated was held at the home of O. L. Farr—is that correct? A. Yes.

Q. And I believe you also stated there were approximately 20 people present at that meeting, is that correct? A. Yes.

Q. Now, will you tell us what you said at that meeting on November 16 held at O. L. Farr's residence?

Mr. Clark: Objected to upon the ground it is hearsay and not binding upon any of these respondents and is not probative of any issue in this case;

(Testimony of E. F. Prior.)

further it is not substantial evidence required in the National Labor Relations Act to support a finding by the Examiner.

Trial Examiner Lindsay: Overruled. You may answer the question. [118]

The Witness: May I have the question?

(The record referred to was read by the reporter, as set forth above.)

The Witness: The meeting was regularly called to order and the usual reports of members. It was reported that that day——

Mr. Clark (Interrupting): I move that all that go out as not responsive, Mr. Examiner.

Mr. Mouritsen: Mr. Examiner, I am examining the witness and I will determine whether the answer is responsive.

Mr. Clark: I have a right under our practice to make a motion that this is not responsive.

Trial Examiner Lindsay: Let us quit arguing. You made your objection.

Mr. Clark: That is all I have to say about it, your Honor.

Trial Examiner Lindsay: Yes.

Mr. Mouritsen: Continue, Mr. Prior.

Mr. Clark: May I have a ruling?

Trial Examiner Lindsay: Just a minute. The history of an organization about which we are talking as the Local, here, is material to the issues. Now, he may answer. You may have an exception.

Mr. Clark: That wasn't the point of my objec-

(Testimony of E. F. Prior.)

tion, Mr. Examiner. The objection is on the ground that it is not re- [119] sponsive to this question.

Trial Examiner Lindsay: I understood that other objections were made regarding it.

Mr. Clark: That is true.

Trial Examiner Lindsay: Will you please read the question to the witness?

(The record referred to was read by the reporter, as set forth above.)

The Witness: The regular procedure of those meetings was followed. The meeting was called to order.

Mr. Clark: I move that that go out as not responsive.

Trial Examiner Lindsay: Will you please read the question to the witness?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: The other may go out.

The Witness: I told the meeting, the members assembled at the meeting, that I would be glad to accompany a committee designated by them in an interview with the management regarding the reported lay-offs and reported intimidations being practiced by the Respondent company.

Q. (By Mr. Mouritsen): Prior to that time at that meeting had anybody reported that there had been intimidation or discrimination?

A. Yes. [120]

(Testimony of E. F. Prior.)

Q. Who had made such report at the meeting?

Mr. Clark: Of course I object to this on the ground it is hearsay, and may I have today, or may it be understood, that throughout the entire proceeding we have the same understanding with respect to hearsay objections, namely, that I am making them to each conversation between this gentleman and any——

Trial Examiner Lindsay (Interrupting): I suggest you make them as we go along, because here is what is happening: I granted the matter of a continuous objection, and then I am forced with going over it again, anyway, so we are covering it about three times.

Mr. Clark: I think I better make them, your Honor.

Trial Examiner Lindsay: You make your objections.

Mr. Clark: I make the objection upon the ground of hearsay to this conversation.

Trial Examiner Lindsay: Yes.

Mr. Wingrove: Might it be deemed the objections interposed by Mr. Clark are on behalf of all Respondents?

Mr. Clark: That is understood.

Trial Examiner Lindsay: Yes. There isn't anything understood that isn't fully on the record, so I think Mr. Attorney's suggestion is correct.

Mr. Mouritsen: I believe there was a question pending.

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: Now, let us get down to an examination of this witness. [121]

Read the question, please?

(The record referred to was read by the reporter, as set forth above.)

Mr. Clark: There is a previous question objected to upon the ground it is hearsay, that it had been reported.

Trial Examiner Lindsay: Will you read the question again, please?

(The record referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Now, did I understand you to mean you have an objection to this last question, Mr. Clark?

Mr. Clark: Well, I haven't objected to the last question, Mr. Examiner, but I have been laboring under the impression that we had a general understanding regarding these objections. Now we have abandoned that, and I am making them specifically, so I asked your Honor if it could be deemed I had objected to the previous question, if that may be read.

Trial Examiner Lindsay: Mr. Clark, just a minute. Off the record.

Mr. Clark: I would rather have your Honor's statement on the record with respect to these rulings.

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: This isn't a ruling. I am just trying to explain something. Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: We will have a recess for a [122] few minutes.

(At this point a short recess was taken, after which proceedings were resumed, as follows.) [123]

Trial Examiner Lindsay: The hearing is called to order.

May we have the last question?

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Lindsay: Was there an objection to that question?

Mr. Clark: I don't think that is objectionable, just the name.

My answer to your question is no. There is no objection to it.

Trial Examiner Lindsay: All right.

The Witness: I don't recall exactly who made just—just which individual made the reports.

Q. By Mr. Mouritsen: At that meeting was a committee appointed or elected to confer with the management? A. Yes.

Q. Who—strike that.

How was it done? By election or appointment at that meeting?

A. As I recall, they were elected.

Q. And who were elected to that committee?

(Testimony of E. F. Prior.)

A. Mr. Spear, Mr. Farr, and Mr. Martin, and myself.

Q. Was anything further done at that meeting with reference to a conference with the management? [124]

A. No.

Q. Did the committee after that time meet with the management?

A. Yes.

Q. When did they meet with the management?

A. The following morning.

Q. Where did they meet?

A. In the office at the Corcoran plant.

Q. Were any representatives of the union present?

A. Yes.

Q. Who were present?

A. Mr. Gordon Hammond.

Q. Were the four members of the committee that you named present at the meeting also?

A. Yes.

Q. Was anyone else present other than Mr. Hammond?

A. No.

Q. Now, what did the—strike that. Who acted as spokesman for the committee?

A. I did.

Q. And who did Mr. Hammond act as—did Mr. Hammond act as spokesman for the company?

A. Yes.

Q. What did you say to Mr. Hammond and what did he say to you at that conference? [125]

A. I told Mr. Hammond that we had been instructed to confer with the management and endeavored to work out some plan to try to avoid any

(Testimony of E. F. Prior.)

greater lay-off of the men than necessary and to discuss the possibility of reducing the hours from 12 and more to around 8 hours a day.

Mr. Hammond stated that he would give that consideration and see if something couldn't be worked out or that a reduction of the hours could be had; and, therefore—or thereby avoid laying off any more men than was absolutely necessary.

Q. At that conference was anything said about an increase of wages?

A. Mr. Spear stated that the membership of the union was not asking for any increase in pay at that time, that they were all familiar with the fact that there was a shorter cotton crop that year and familiar with the conditions, and the primary interest was in trying to provide as much employment for the season for as many employees as possible. [126]

Q. At that conference, was the name of either Tom or Joe Hammond mentioned? A. Yes.

Q. Who mentioned it?

A. Mr. Spear told Mr. Hammond that the committee had also been instructed to take up the allegation that Mr. Tom and Joe Hammond were making intimidating remarks in regard to the organization, to the employees, and that they felt out of fairness that that should cease.

Q. Did Mr. Gordon Hammond say anything at that time?

A. At that time Mr. Hammond stated that he—that neither Mr. Tom Hammond or Mr. Joe Ham-

(Testimony of E. F. Prior.)

mond had the right to hire or fire the employees for the Company; and I asked Mr. Hammond if they did not—if he did not issue the instructions, the operations, the various operations, that he expected carried out in the various departments, to Mr. Tom and Mr. Joe Hammond, and if he did not hold them responsible for seeing that those instructions were carried out.

Q. Did Mr. Hammond make a reply?

A. Mr. Hammond said that was correct.

Q. Do you recall anything further that was said at that conference either by yourself or any other member of the committee, or Mr. Gordon Hammond?

A. Mr. Gordon Hammond stated that he would talk to Mr. Tom and Mr. Joe Hammond in regard to any intimidating remarks that [127] they were alleged to have made.

Q. Was anything further said at the conference?

A. No.

Q. When did you next have any dealing with any representative of the Company? A. (Pause.)

Mr. Mouritsen: Will it be understood when I refer to the Company I refer to the J. G. Boswell Company?

Mr. Clark: Surely.

The Witness: The next conversation was a telephone conversation with Mr. Louis Robinson on November—the night of November 18th.

Q. By Mr. Mouritsen: Prior to the telephone

(Testimony of E. F. Prior.)

conversation with Mr. Louis T. Robinson, had you had a conversation with any employees of the Company? A. Yes.

Q. Where did that conference take place?

A. Bakersfield.

Q. Other than yourself, who were present?

A. Mr. R. K. Martin and Mr. O. L. Farr.

Q. And where in Bakersfield did this conference take place?

A. It started at about a block and a half from the Greyhound Bus station, and on and into the Greyhound Bus station in Bakersfield.

Q. What was the date of the conversation with the employees? [128]

A. November 18th, 1938.

Q. Yes.

Was anything said in this conference relative to the employees' relations with the J. G. Boswell Company? A. Yes.

Q. Will you state what was said in that conversation by yourself and by these other men you have named?

Mr. Clark: Just a minute. I object to that as hearsay and not substantial evidence required to support the findings in a proceedings of this kind.

Trial Examiner Lindsay: He may answer, and you may have an exception.

The Witness: Mr. Farr and Mr. Martin told me that the employees and foremen of the plant had

(Testimony of E. F. Prior.)

evicted all of the known Union men that were employed that morning at 10:00 o'clock in the plant.

Mr. Clark: May I have that answer read back?

Trial Examiner Lindsay: Read the answer.

(The answer referred to was read by the reporter, as set forth above.)

Q. By Mr. Mouritsen: Now, Mr. Prior, you heard the reading of the answer.

Was that the statement you intended to make?

A. No.

Q. I will ask you to give again the conversation that you had [129] with Mr. Farr at that time?

Mr. Clark: Same objection on the ground it is hearsay.

Trial Examiner Lindsay: Same ruling.

The Witness: Mr. Farr and Mr. Martin told me that morning at 10:00 that a group of employees and a number who were not employees of the Company, along with the foremen of the Company, had evicted the Union members who were in the plant working at that time.

Mr. Mouritsen: May I have that answer read?

Trial Examiner Lindsay: Read the answer.

(The answer referred to was read by the reporter, as set forth above.)

The Witness: I should have stated that that morning—can the first part of the answer be read again?

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: Read the answer, Mr. Reporter.

(The answer referred to was read by the reporter, as set forth above.)

Q. By Mr. Mouritsen: With reference to that answer that you have had read, at what time did the 10:00 o'clock that you mentioned refer to? The time of the conversation with Mr. O. L. Farr and Mr. Martin, or the time when these employees had been evicted, as they stated?

A. To the time that the employees had been evicted from the plant. [130]

Q. And at what time, approximately, did you have this conversation with O. L. Farr and Martin?

A. At approximately 6:30 in the evening.

Trial Examiner Lindsay: Of the same day?

The Witness: Of the same day.

Mr. Clark: And at Bakersfield, as I understand it?

The Witness: And at Bakersfield.

Q. By Mr. Mouritsen: Now, subsequent to that time did you have a conversation with Mr. Louis T. Robinson? A. Not before that time, no.

Q. After that time? A. Yes.

Q. Approximately how long after, that is, after your conversation with Farr and Martin?

A. At approximately 7:00 o'clock I called Mr. Robinson on the telephone.

Trial Examiner Lindsay: That same night?

The Witness: That same evening.

(Testimony of E. F. Prior.)

Q. By Mr. Mouritsen: And where did you call Mr. Robinson? At his home or at the company's plant in Corcoran?

A. I called for Mr. Louis T. Robinson—placed a person to person call at Mr. Louis T. Robinson's residence.

Q. And did you get in touch with Mr. Robinson after you made the call?

A. He stated it was Mr. Robinson speaking. [131]

Q. And this conversation was had over the telephone, is that correct? A. Yes.

Q. Now, what did you say to Mr. Robinson and what did he say to you? That is, in that conversation?

A. I told him that a committee of the employees had informed me of the occurrence that had happened that morning at 10:00 o'clock and that there was no doubt some misunderstanding both between the management and all of the employees, and that I would be very glad to meet with the management and the employees and try to adjust and assist in arriving at a complete understanding of any differences or misunderstanding that might be had.

Mr. Robinson stated that he knew very little about the incident, that the employees were holding a meeting that night and he was going to wait until he had a report from them before he did or said anything.

I told Mr. Robinson that I felt the situation, if not already serious, would probably become serious,

(Testimony of E. F. Prior.)

and it was probably a responsibility of all parties to try to come to an understanding on the issues. And he stated that he didn't see that there was anything he could do about it.

I told Mr. Robinson that these men that had been evicted were members of the American Federation of Labor and that if the employees of the company were wanting to take on a fight, [132] that we were not backing away from it. To which Mr. Robinson said that he didn't know what I was talking about; and the conversation ended.

Q. After that time did you have any further conferences with representatives of the company?

A. Yes.

Q. When next did you have a conference with representatives of the company?

A. The next morning on November 19, 1938.

Q. Where was this conference held?

A. In the northeast office of the office building, at Corcoran.

Q. Were any representatives of the union present?

A. Yes.

Q. Who was present representing the union?

A. Mr. R. K. Martin and Mr. Spear.

Q. And were you yourself present?

A. Yes.

Q. Was anyone present representing the company?

A. Mr. Gordon Hammond and Mr. Louis Robinson.

(Testimony of E. F. Prior.)

Q. Was anyone else present at that conference other than the men you have already named?

A. No.

Q. Will you state what was said by representatives of the union and by representatives of the company at that confer- [133] ence?

A. I told Mr. Robinson and Mr. Hammond that the nature of our call was to try to have some understanding as to the trouble that occurred the following day—or the previous day, and to endeavor to have the men who had been evicted from the plant placed back on the payroll and the entire matter ironed out.

Mr. Robinson stated that the men had acted—or that the employees had acted and that there was nothing he could do about it.

I asked Mr. Robinson if we were expected to deal with the management or the employees, that in previous negotiations or understandings that had been taken up with the other companies by the management, that that had been the procedure; that we were changing the procedure here and for him to state and we would be very glad to meet and discuss the matter with the employees.

He said that there was nothing he could do other than for Mr. Hammond and himself to feel out the sentiment of the employees and see how they felt about these men returning to work.

I asked Mr. Robinson about how long he thought it would be before he knew and he stated that he would do the best he could.

(Testimony of E. F. Prior.)

I told him that the matter was serious, probably more [134] serious than the management or the employees realized, and that we would like to know by not later than 12:00 o'clock as to what action was going to be taken. And then the conference *end*.

Q. At approximately what time of the day was this conference held?

A. Approximately between 9:30 and 11:00.

Q. Did you hear from Mr. Robinson prior to 12:00 o'clock on that day? A. No.

Q. Did you hear from Mr. Robinson at all on that day? A. No.

Q. After the—after you failed to receive any answer by 12:00 o'clock, did the local take any action with respect to the company? A. Yes.

Q. What action was taken by the union?

A. They voted to place a boycott against the company and its products.

Q. After your conference on November 19, 1938, did you have any further conference with representatives of the company? A. Yes.

Q. When next did you have a conference with the—with a representative of the company? [135]

A. (Pause) On or about November 25.

Q. Of what year? A. 1938.

Q. Where was this conference held?

A. In the office of Mr. J. G. Boswell on Spring Street in Los Angeles.

Q. Who were present at that conference?

A. Mr. J. G. Boswell and another member of

(Testimony of E. F. Prior.)

the firm whose name I do not recall.

Q. And yourself? A. Myself.

Q. Those were the only three persons present, is that correct? A. Yes.

Q. What did you say to Mr. Boswell at that time and what did he say to you?

A. I told Mr. Boswell it was the opinion of the union that the whole matter was a case of misunderstanding; that the company no doubt misunderstood the motives of the organization, and that probably a number of the men, the employees of the plant, were misinformed, and we would be very—we were very anxious to sit down with him and try to have a complete understanding of all of the issues and to have the matter settled.

Q. Did Mr. Boswell say anything? [136]

A. Mr. Boswell told me that if organizations were going to attack the company and tie up their products and use goon squad tactics, that they would probably have to affiliate themselves with some organization for their protection, and as far as the trouble at Corcoran, that the local management was competent to handle that and it was in their hands.

Q. Was anything further said that you recall?

A. No.

Q. After November 25, 1938, or about that date, did you have any further conferences with representatives of the company? A. Yes.

Q. When did you next have a conference with a representative of the company?

(Testimony of E. F. Prior.)

A. On or about November 27.

Q. What year?

A. 1938. Mr. Spear and myself called at the plant or the office of the Corcoran plant and asked to see Mr. Robinson. We were informed that Mr. Robinson was out and had a conference with Mr. Gordon Hammond.

Q. And who was—was anyone else present other than you, Mr. Spear, and Mr. Robinson, or Mr. Hammond, pardon me.

A. No.

Q. Did this conference take place in the office of the company? [137]

A. Yes.

Q. And that is the office here in Corcoran, is that correct?

A. Yes.

Q. Now, what was said by you and what was said by the other persons present at this conference?

A. Well, we told Mr. Hammond that we wanted to discuss the matter, that it was not our desire to have to continue the prosecution of the boycott and of these misunderstandings and trouble; it was not beneficial to either the organization or the company, and that we would like to work out something agreeable to all parties to settle the issue.

Mr. Gordon Hammond stated that he was very sorry that the whole thing had happened; that had he been in the plant that day that it probably would not have occurred; that it was out of his hands, that he was an employee of the company and that he might be dismissed the same as any other employee of the company, and that he would have to see Mr.

(Testimony of E. F. Prior.)

Robinson as to taking the men back on the payroll.

Q. Do you recall anything further that was said at that conference?

A. I asked Mr. Hammond if he would arrange a conference with Mr. Robinson for us the following day, and he said that he would try to.

Q. Did you hold a conference with Mr. Robinson the follow- [138] ing day? A. Yes.

Q. Who were present at that conference?

A. Mr. R. K. Martin, Mr. Louis T. Robinson, and myself, at Mr. Louis T. Robinson's office.

Q. And what did you say to Mr. Robinson at that time and what did he say to you?

A. I told Mr. Robinson that we wanted to discuss the matter of these men being replaced on the payroll; we felt that they had been discriminated against and that if someone in authority stated that there was to be no arguments on the job, that as far as the other employees were concerned that there would be no opposition. Mr. Robinson wanted to know who the men were that we referred to that should be placed back on the payroll, and I named, started to name the men. I named Mr. Spear and he said that as there was work from time to time that they could use Mr. Spear; that there had been times during the time of November 18 to that date that he would have worked a few days. [139]

He wanted to know who was next. I named Mr. R. K. Martin and Mr. Robinson laid his pencil on the desk and said, "Well, Mr. Martin's machine is

(Testimony of E. F. Prior.)

just shut down and we cannot use Mr. Martin. We might at some time in the future, but we don't have any idea when."

I told Mr. Robinson if that was the attitude in regard to Mr. Martin, that we could not have some understanding as to him, as well as all the rest of them, there was no need of naming any further, and the conference ended.

Q. After that conference, did you have any further conferences with the management?

A. Yes.

Q. With representatives of the Company?

A. Yes.

Q. When next did you have a conference with representatives of the Company?

A. January 17th, 1939.

Q. Where was that conference held?

A. In the office of Mr. Louis T. Robinson at the Corcoran plant.

Q. Were any representatives of the Union present? A. Yes.

Q. Will you please name them?

A. As I recall, there was Mr. L. A. Spear, Mr. O. L. Farr, R. K. Martin, George Andrade, Mr. Johnston, Mr. Walter Winslow [140] and myself. I believe that is all that were present at that meeting representing the Union.

Q. Were any representatives of the Company present? A. Yes.

Q. Will you name them, please?

(Testimony of E. F. Prior.)

A. Mr. Louis Robinson and Mr. William Boswell.

Trial Examiner Lindsay: May I beg your pardon just a moment? I didn't get the date of the last meeting.

Mr. Mouritsen: I believe he stated on or about January 17th, 1939.

Q. Were any employees of the Company present? A. Yes.

Q. Will you name them, please?

A. Mr. Bill Robinson and Mr. Kelly Hammond.

Q. Were any other people present at the conference? A. Yes.

Q. Who?

A. Mr. Maurice Howard, Field Examiner for the National Labor Relations Board, 21st Region.

Q. What did the representatives of the Union say at that meeting?

A. The representatives of the Union stated that on November the 18th, that Mr. Bill Robinson and Kelly Hammond had shut down some of the machinery in the gins at the time the eviction occurred, the eviction of the Union employees on November 18th, [141] 1938.

Q. Did Mr. Bill Robinson or Mr. Kelly Hammond say anything at that time?

A. They at first denied that they had shut down, cut the power off on any of the machinery.

Mr. Clark: Just one moment, Mr. Examiner. Do I understand that this statement was made at the

(Testimony of E. F. Prior.)

conversation? The witness said they had first denied—you mean they denied it there, or on some other occasion?

Mr. Mouritsen: I think counsel is misinterpreting the statement. If I understood the witness——

Trial Examiner Lindsay (Interrupting): Just a moment. We will read back the record.

(The record referred to was read by the reporter, as set forth above.)

The Witness (Continuing): But later admitted that they did cut the power off the machinery and stopped it.

Q. (By Mr. Mouritsen): Did the representatives of the Company say anything at that conference?
A. Yes.

Q. Which of the representatives?

A. Mr. Robinson.

Q. What did he say?

A. He stated that neither Mr. Bill Robinson or Mr. Kelly Hammond were authorized to cut the power off of the machinery, [142] and that no one had been authorized on behalf of the Company to interfere with the operations of the plant.

Q. Was anything else said at that conference that you recall?

A. Not that I recall.

Q. After this conference, on or about January 17th, 1939, did you have any further conference with representatives of the Company?

(Testimony of E. F. Prior.)

A. Yes.

Q. When next did you have such a conference?

A. The following day, January 18th, 1939.

Q. Where did that conference take place?

A. In Mr. Louis Robinson's office.

Q. Were any representatives of the Union present?

A. Myself

Q. A representative of the Company present?

A. Mr. Louis Robinson.

Q. Was anyone else present?

A. No.

Q. What was said by you, and what was said by Mr. Robinson at that conference?

A. I stated to Mr. Robinson that Mr. Maurice Howard had advised that I have a conference with him for the purpose of determining whether or not Mr. Robinson's attitude and opinion had changed in reference to the refusal to reinstate the men that [143] had been discharged prior to November 18th, and those that had been evicted from the plant on November 18th, and Mr. Robinson so stated that his opinion had not changed, that he had not changed his position.

Q. After that time did you have any further conferences with any representatives of the Company?

A. No.

Q. During the year 1939, did the Local place any pickets about the plant of the Company in Corcoran?

A. Yes.

Q. Prior to the placing of the pickets at the Company's plant in Corcoran, did you ever discuss

(Testimony of E. F. Prior.)

such a matter with the District Attorney of Kings County? A. Yes.

Q. When did you have such a conference?

A. (Pause). On or about January the 21st.

Q. Of what year? A. 1939.

Q. Where did the conference take place?

A. In the District Attorney's office at Hanford, California.

Q. Other than yourself, who were present at the conference? A. Mr. Elgin Ely.

Q. Who is Mr. Elgin Ely?

A. A member of the Local.

Q. Was he at that time an employee of the Boswell Company, [144] to your knowledge?

A. No, he was not.

Q. Was he a former employee of the Boswell Company, to your knowledge? A. Yes.

Q. Who else was present?

A. Mr. Roger Walch, the District Attorney, had Mr. Springer, Chief of Police of Corcoran, on the wire listening in to all of the conversation.

Q. What do you mean——

Mr. Clark (Interrupting): What was that last?

Q. (By Mr. Mouritsen): What do you mean by "on the wire"?

Trial Examiner Lindsay: Read the last answer, please?

(The record referred to was read by the reporter, as set forth above.)

(Testimony of E. F. Prior.)

Q. (By Mr. Mouritsen): Now, what do you mean by that statement, please?

Trial Examiner Lindsay: Now, you asked for it to be read, Mr. Clark. Would you like to have it read now?

Mr. Clark: I would like to have it read now, your Honor.

(The record referred to was read by the reporter, as set forth above.)

Mr. Mourtsen: Are you through, Mr. Clark?

Mr. Clark: Yes.

Q. (By Mr. Mouritsen): What do you mean by the statement that [145] he had Mr. Springer listening in? How was that done?

A. Apparently there was a hook-up on an inner office communication system in connection with the Telephone Exchange between the District Attorney's office, and Sheriff's office, and the Chief of Police here in Corcoran.

Q. Well, did he state to you that he was connecting it up so that Mr. Springer could listen in?

A. Yes.

Q. Now, will you state the conversation that you had with Mr. Walch on that occasion?

Mr. Clark: Just one moment, Mr. Examiner. Am I to understand this was a telephone conversation? I thought the witness testified to a meeting.

Trial Examiner Lindsay: Yes, that was my understanding. You were in the office with the District Attorney?

(Testimony of E. F. Prior.)

The Witness: Yes.

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record. [146-147]

Q. (By Mr. Mouritsen): Will you continue, Mr. Prior, to state the conversation that you had with Mr. Walch on that occasion.

A. I told Mr. Walch that our——

Mr. Clark (Interrupting): Just one minute. I object to this on the ground it is hearsay, not binding upon any of these respondents, your Honor.

Trial Examiner Lindsay: He may answer.

The Witness: I told Mr. Walch that we had called on him for a conference to determine the nature of the picketing ordinances of Kings County. Mr. Walch told me, he said, “As you know, Mr. Prior, we have a very strict picketing ordinance in Kings County and that in every instance we are going to rule against you.”

I said, “That is fair enough, Mr. Walch. We are used to playing the game that way. You make the rules and we will play the game and I will assure you that the local that I represent will not at any time, if it is humanly possible, to avoid, step over the law as you define it.

Q. (By Mr. Mouritsen): Well, had there been any discussion as to what constituted legal or illegal picketing under the ordinances of Kings County at that conference?

A. Not up to that point of the conversation.

(Testimony of E. F. Prior.)

After that we took the picketing ordinance, section by section, and Mr. Walsh gave us his ruling on each section, or told us in re- [148] sponse to questions that I asked him regarding it, what were our rights and what things if we did that we could expect prosecution on.

Mr. Clark: May it please the Examiner, I move to strike out this conversation upon the further ground—in addition to the hearsay objection—that it is incompetent, irrelevant and immaterial in this case, there being no connection shown between the District Attorney and any of the respondents and the District Attorney not being subject to this investigation, that is, not being named as one of the respondents in this investigation.

Trial Examiner Lindsay: The motion is denied. Would you like a recess?

Mr. Clark: Yes, I would, Mr. Examiner.

Trial Examiner Lindsay: A ten-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Lindsay: The hearing is called to order. Gentlemen, will you come up here just a minute?

(Conference between counsel and the Trial Examiner.)

Trial Examiner Lindsay: You may proceed.

Q. (By Mr. Mouritsen): I believe when we were last in session that you were testifying regard-

(Testimony of E. F. Prior.)

ing the conference you had with Mr. Walch. Do you recall anything further that was said at that conference either by yourself or anyone else after you [149] went through the picketing ordinance and he explained to you what would be allowed and what would not be allowed under the ordinance?

Mr. Clark: Objected to as hearsay and not binding on any of these respondents.

Trial Examiner Lindsay: You may answer.

The Witness: I do not recall any further conversation.

Q. (By Mr. Mouritsen): Now, as I recall, you testified that that conference was on or about January 21, 1939. How long after that was picketing instituted at the company's plant in Corcoran?

A. On or about January 23, 1939.

Q. Prior to the institution of the picketing was any meeting of the union or its members held?

A. Yes.

Q. When was that?

A. In the evening of January 21, 1939.

Q. Where was that held?

A. In my room at the Occidental Hotel in Corcoran.

Q. Who were present at that meeting?

A. Mr. Spear, Mr. Powell, Mr. Johnston, Mr. Martin, Mr. Wingo, Mr. Andrade, are all that I recall.

Q. At that meeting was anything said about picketing the Corcoran plant? A. Yes. [150]

(Testimony of E. F. Prior.)

Q. State what was said by yourself and what was said by the others present regarding the picketing of the company's plant at Coreoran.

Mr. Clark: Objected to as hearsay and not in any way binding on any of the respondents in this hearing, self-serving, incompetent, irrelevant, and immaterial.

Trial Examiner Lindsay: He may answer.

The Witness: I explained to the members that we had not gone to the trouble of picketing for the purpose of informing the various union members of other organizations who would be going in and out of the plant of the trouble between the company and the union for the reason that we had not desired to tie up the business and products of the company to any greater extent than was absolutely necessary, because after the trouble was over we would have to, as an organization, work the reverse and get out and try to rebuild the business; that inasmuch as the company was taking a very arbitrary stand and would not consider any means of settling or adjusting the disagreement, we felt that it would be necessary to place the pickets down there and make the boycott still more effective.

And the membership of the organization present voted to take that action.

Q. (By Mr. Mouritsen): At that meeting was the method of picketing discussed? [151]

A. Yes.

Q. What was said regarding the method of picketing?

(Testimony of E. F. Prior.)

Mr. Clark: Same objection, your Honor, namely, that it is hearsay and not binding on any of the respondents to this proceeding, and it is self-serving.

Trial Examiner Lindsay: You may answer.

The Witness: I explained the conference had with the District Attorney that same morning and that it was felt by the District Attorney and——

Mr. Mouritsen (Interrupting): Can you speak a little higher, Mr. Prior? I can hardly hear you.

The Witness: It was felt by the District Attorney, Mr. Ely and I had agreed with him, it would be the best procedure to place two men in an automobile near the entrance of the company's plant with a sign reading, "A. F. of L. picket car" placed on the car used for picketing, and that method was adopted. [152]

Mr. Clark: May it please the Examiner——

Trial Examiner Lindsay (Interrupting): It may be stricken.

Mr. Clark: I understand that these are the statements made by this gentleman to the members of the Union at a meeting.

Trial Examiner Lindsay: That is right.

Q. (By Mr. Mouritsen): After that, I believe you stated prior to this time that the picketing was instituted on or about January 23rd, 1939; is that correct? A. Yes.

Q. Were you present at the plant when the picketing was first started? A. Yes.

(Testimony of E. F. Prior.)

Q. Will you describe, please, what the picketing consisted of that you saw on January 23rd, 1939?

A. Two of the members, George Andrade and Walter Winslow and myself drove down to the plant and parked the car immediately East of the scales of the Boswell plant near the power pole that is just to the South, on the South edge of the scale platform about a foot or a foot and a half East of the power pole, to be sure that we were not on the Company's property.

The sign was placed on the car, and as trucks came in with merchandise or came in to receive merchandise, there was an opportunity, without stepping directly in front of them—[153] we stepped out of the car and explained the controversy between the Union and the Company and requested their cooperation.

Q. Now, after the picketing was instituted, did you ever receive any reports regarding the pickets or the picketing at the plant?

A. Yes.

Q. When did you next hear regarding the pickets or picketing at the plant?

A. The morning of January 30th, 1939.

Q. And where were you when you next heard about the picketing at the plant?

A. In the office of the San Joaquin Cotton Oil Company at Bakersfield.

Q. And how did you hear regarding the picketing, or what did you hear regarding the pickets and the picketing at the plant?

(Testimony of E. F. Prior.)

A. I was informed by telephone——

Q. (Interrupting): Who informed you by telephone? A. Mr. Hatfield.

Q. Who is Mr. Hatfield.

A. Secretary-treasurer of the Teamsters' Local at Bakersfield.

Q. What did he tell you?

Mr. Clark: I object to that upon the ground it is hearsay and is not binding upon any of the Respondents to this proceeding. [154]

Trial Examiner Lindsay: He may answer.

The Witness: He told me he had received a telephone call from Mr. Martin, Secretary of the Local at Corcoran, that approximately 200 farmers had come down and ran the pickets off of the picket line and that I had better get up to Corcoran right away.

Q. (By Mr. Mouritsen): Did you then proceed to Corcoran? A. Yes.

Q. Did you see Mr. Martin? A. Yes.

Q. Where did you see him?

A. At his home in Corcoran.

Q. Other than yourself and Mr. Martin, were any other persons present? A. Yes.

Q. Who else were present?

A. Mr. Steve Griffin, Mr. Johnston, Mr. Martin, Mr. Elgin Ely and one of the other Ely boys whose initials I don't recall. I will have to identify him as the one known as "Fat boy Ely."

Trial Examiner Lindsay: Just talk a little louder, please.

(Testimony of E. F. Prior.)

The Witness: And a number of other members of the organization.

Q. (By Mr. Mouritsen): Did you at that time have a conver- [155] sation with Mr. Martin regarding the pickets or picketing out at the Company's plant? A. Yes.

Q. What conversation did you have at that time with Mr. Martin?

Mr. Clark: Objected to as hearsay, and not binding upon any of the Respondents to this proceeding, self-serving.

Trial Examiner Lindsay: He may answer. You may have an exception.

The Witness: I asked Mr. Martin for the details of what had happened. Mr. Martin told me that Mr. Eugene Ely had told him that there was a mob of farmers accumulating at the Boswell plant, and that the two of them had driven down to the plant and driven as near to the pickets' car as it was possible, through the crowd of men gathered there; that one of the men opened—that is, one of the crowd gathered there—opened the car door and asked the question, "Is this some more of them?"

And another man on the other side of the car said, "Yes, sir, I have seen these fellows."

They were told to turn around and get out of town. Mr. Martin reported that he asked just who was doing this, who was responsible for this, and a number of them stated "We, the Associated Farmers, and we represent 1200 more."

(Testimony of E. F. Prior.)

Mr. Martin stated, "That is all we want to know," and [156] turned around and came back to his house.

Trial Examiner Lindsay: You will have to keep your voice up. I can't hear all of it.

The Witness: Pardon me.

Q. (By Mr. Mouritsen): Now, after this conference with Martin and the other people that you mentioned, did you or——

Mr. Clark (Interrupting): May it please your Honor, I think with respect to this conversation, simply because of an over-abundance of caution, I will move to strike it out on the same grounds previously urged in support of the objection, namely, it was hearsay, not once removed but several times removed and not the substantial evidence required under the Act to support any finding in a proceeding such as this.

Trial Examiner Lindsay: Motion denied.

Q. (By Mr. Mouritsen): Now, after that conference, did the Local take any action with reference to this incident regarding the pickets?

A. Yes.

Q. What action was taken by the Local with reference to this incident regarding the pickets?

A. A telegram was sent to the Governor's office of the State of California.

Q. By whom was that sent?

A. By myself.

Q. And do you have the telegram or a copy of the telegram? [157]

(Testimony of E. F. Prior.)

A. I think it is in my file.

Q. Will you obtain it?

Mr. Clark: Might I add to the objection just made, your Honor, with respect to that specific conversation, also the objection is grounded upon the proposition that any such conversation had between this gentleman and Martin—I believe the other party was—cannot be binding upon the Associated Farmers, no authority having been shown for the statement purportedly made. I simply want the record to show that as added to the objection.

Trial Examiner Lindsay: The testimony may stand.

The Witness: Yes, I have a copy of it.

Mr. Mouritsen: May I have it, please?

(The document referred to was passed to Mr. Mouritsen.)

Mr. Mouritsen: May this be marked——

Trial Examiner Lindsay (Interrupting): Board's
7——

Mr. Mouritsen (Continuing): ——for identification.

(Thereupon, the document above referred to was marked as Board's Exhibit No. 7 for identification.) [158]

Trial Examiner Lindsay: May I see that?

(The document referred to was passed to the Trial Examiner.)

(Testimony of E. F. Prior.)

Q. (By Mr. Mouritsen): I believe you stated that you sent a telegram to the Governor regarding the picket incident, is that correct? A. Yes.

Q. Do you know what happened to the original of that telegram?

A. It was left in the—given to the operator in the Santa Fe Depot in Hanford, California.

Q. Do you know whether or not that original telegram was delivered to the Governor's office?

A. I received a telephone call from the Governor's secretary that night—

Mr. Clark (Interrupting): Now, may I ask that that go out as not responsive, your Honor? The question asks whether he knows.

Trial Examiner Lindsay: Yes, and answer the question yes or no.

The Witness: Yes.

Q. (By Mr. Mouritsen): How do you know that?

A. The Governor's secretary telephoned me in response to the telegram that same night.

Q. And who is the Governor's secretary? [159]

A. Kenneth Fulton.

Q. I show you Board's Exhibit 7 for identification and ask if you have seen that before.

A. (Examining document): Yes.

Q. Will you identify it, please.

A. (Examining document): Yes, I wrote it.

Q. When did you write it?

A. The evening of January 30, 1939.

(Testimony of E. F. Prior.)

Q. And was this Board's Exhibit 7 for identification given to the telegraph operator or was another document handed to the telegraph operator?

A. Another document that this was copied from.

Q. And when did you make the copy?

A. (Pause)

Q. Before or after you made the other document that was handed to the telegraph operator?

Trial Examiner Lindsay: Just a minute. Your question is misleading. Strike that question and reframe it.

Q. (By Mr. Mouritsen): Did you make Board's Exhibit 7 for identification before or after you made the other document that you handed to the telegraph operator?

A. Immediately after.

Q. And do you know of your own knowledge whether or not this is an exact copy of the document that you handed to the telegraph operator?

[160]

Trial Examiner Lindsay: Answer yes or no.

The Witness: Yes.

Q. (By Mr. Mouritsen): Is it or is it not an exact copy?

A. (Examining document): Yes, it is.

Q. And this is made out in your own handwriting, is that correct? A. Yes.

Mr. Mouritsen: At this time, Mr. Examiner, I offer Board's Exhibit 7 for identification as Board's Exhibit 7 in evidence.

(Testimony of E. F. Prior.)

Mr. Clark: Objected to on the ground there is no proper foundation laid, may it please your Honor, and further on the ground that that document is self-serving, based upon the rankest sort of hearsay; couldn't under any possibility be binding on the Associated Farmers or any other respondent in this case, and is incompetent, irrelevant and immaterial.

In connection with the objection which is addressed to the technical requirements for admission, may I point out to the Examiner that under the rules in this district the original telegram is the writing handed by the sender to the telegraph company.

Trial Examiner Lindsay: I understand that.

Mr. Clark (Continuing): —which is obtainable from the telegraph company. And I simply submit that there has been no foundation laid for the admission of this document in the [161] sense that there hasn't been the proper showing made that it is impossible to obtain the original. In point of fact, the original could be obtained by going to the telegraph company or issuing a subpoena for it.

Trial Examiner Lindsay: Sustained.

Q. (By Mr. Mouritsen): You state that on that day, however, you did send a telegram to the Governor's office, is that correct? A. Yes.

Q. With reference to the picketing, was any other action taken by the local at that time or subsequent to that time?

(Testimony of E. F. Prior.)

A. Yes, the following day.

Q. What further action was taken by the local with reference to the picketing on the following day.

A. Mr. Elgin Ely, Mr. R. K. Martin, and myself were instructed to attend a conference in the Governor's office on the following day.

Q. By whom were you so instructed?

A. By the members of the local.

Q. Now, I believe you stated that on the evening of the same day that you sent the telegram you received a call from Kenneth Fulton in the Governor's office, is that correct? A. Yes.

Q. Where were you when you received such call?

A. At R. K. Martin's residence in Corcoran.

Q. And how do you know—strike that. [162]

Do you know that it was the Governor's office or Kenneth Fulton calling you?

A. He identified himself as Kenneth Fulton, secretary to the Governor, and stated that he had received my wire.

Q. Will you state the conversation that took place between you and Mr. Fulton at that time?

Mr. Clark: Objected to as hearsay and not binding on any respondent in this case.

Trial Examiner Lindsay: He may answer.

Mr. Clark: Also, may I add to that objection—

Trial Examiner Lindsay (Interrupting): Strike my ruling.

(Testimony of E. F. Prior.)

Mr. Clark (Continuing): That it is incompetent, irrelevant and immaterial, and not within any of the issues made in the pleadings here, that is, the fourth amended complaint, or the answer.

Trial Examiner Lindsay: You may answer. And you may have an exception.

Mr. Clark: Very well.

The Witness: What was the question?

(The question referred to was read by the reporter, as set forth above.)

The Witness: Mr. Fulton told me that he had contacted the District Attorney *at* Kings County and that it had been [163] suggested that a conference be held the following day in his office, if possible for all parties to attend, and asked if I could attend, arrange to attend such conference; and I stated that it could be done.

And I don't recall that any time was set over the telephone.

Q. (By Mr. Mouritsen): Then, I believe you testified that the next day—what was the date on the next day after?

A. January 31, 1939.

Q. I believe you stated that a committee of the union was chosen for that conference, is that correct?

A. Yes.

Q. Did the committee that you named attend a conference in the Governor's office on or about January 31, 1939?

(Testimony of E. F. Prior.)

Mr. Clark: Objected to as incompetent, irrelevant and immaterial; and not within the issues of this proceeding as framed in the fourth amended complaint and the answer on file or the charge filed.

Trial Examiner Lindsay: You may answer.

The Witness: Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: Yes.

Q. (By Mr. Mouritsen): Will you name the committee again? I have forgotten the names you named. The ones that attended [164] the conference in the Governor's office.

A. Mr. Elgin Ely, Mr. R. K. Martin, and myself.

Q. Were there any representatives of the J. G. Boswell Company present at that conference?

A. No.

Q. Were there any representatives of the Associated Farmers of Kings County, Inc., present at that conference?

Mr. Clark: Objected to on the ground it calls for a conclusion of this witness, also based on hearsay; also incompetent, irrelevant and immaterial, not within the issues of this proceeding.

Trial Examiner Lindsay: He may answer.

The Witness: They were not.

Q. (By Mr. Mouritsen): Who else, if anyone, was present at that conference?

(Testimony of E. F. Prior.)

A. Mr. Kenneth Fulton, Mr. Kidwell, a representative of the Labor Relations Department of the State of California, and Mr. Seey.

Q. Who is Mr. Seey?

A. He was the legislative representative of one of the Railway Brotherhoods of San Francisco.

Q. At this conference was anything said regarding the picket incident of January 30, 1939?

Mr. Clark: The same objection, may it please your Honor, that it is hearsay and not in any way binding on any of the respondents in this proceeding; also self-serving, and incompetent, irrelevant and immaterial. [165]

Trial Examiner Lindsay: Do you know whether or not the Farmers Association was notified by the Governor's office of that meeting?

The Witness: I do not.

Trial Examiner Lindsay: Do you know whether or not the District Attorney was notified?

The Witness: Mr. Fulton, Secretary for the Governor, stated that the District Attorney was to be there that day.

Trial Examiner Lindsay: Was he there?

The Witness: No.

Trial Examiner Lindsay: He may answer.

The Witness: Could I have the question?

(The record referred to was read by the reporter, as follows:

“Q. Were there any representatives of the Associated Farmers of Kings County, Inc. present at that conference?”)

(Testimony of E. F. Prior.)

Mr. Mouritsen: That is not the last question.

Trial Examiner Lindsay: The last question is what we want. The last question was, in substance, was the picket incident discussed at that meeting in the Governor's office.

Mr. Clark: That is the one the objection was made to.

Trial Examiner Lindsay: And on which I have ruled that he may answer.

The Witness: Yes.

Q. (By Mr. Mouritsen): Who said anything regarding the picket- [166] ing incident.

A. I related the incident to Mr. Fulton and the other gentlemen, what had occurred at Corcoran the day previous on January 30th, 1931.

Q. Was anything said by anyone else at that conference regarding that picketing incident of January 30th, 1939?

A. We were told——

Q. (Interrupting): No, the answer to that is either yes or no and then we will go into what was said. A. Yes.

Q. By whom was it said?

A. By Mr. Fulton.

Q. And what did he say regarding the picketing incident?

Mr. Clark: We object to that on the ground it is hearsay and not binding upon any of the Respondents in this proceeding, and also incompetent, irrelevant and immaterial.

(Testimony of E. F. Prior.)

Trial Examiner Lindsay: He may answer.

The Witness: He suggested to Mr. Kidwell that Mr. Kidwell and the committee go into a conference, and that a report be taken from all three members of the Union committee in shorthand and transcribed and it could be forwarded to the Governor who was sick, and that if Mr. Walch came in during the day before we left, that we would all have a conference with Mr. Walch.

Q. (By Mr. Mouritsen): Was anything further done or said at [167] that conference regarding the picketing incident? A. No.

Mr. Clark: May I ask one question to simplify the matter so I won't have to go into it on cross examination?

By "committee" does the witness mean the representatives from this Local Union?

Trial Examiner Lindsay: I don't know. You will have to ask him.

Mr. Clark: Will you ask him that, counsel?

Mr. Mouritsen: Yes.

Q. When you referred to the committee in your last statement, did you refer to the committee of the Local?

A. Yes, Mr. Elgin Ely, Mr. Martin and myself.

Trial Examiner Lindsay: Does that clear it?

Mr. Clark: Yes.

Q. (By Mr. Mouritsen): After that time were any further conferences held in the Governor's office, with reference to the picketing incident of January 30th, 1939? A. Yes.

(Testimony of E. F. Prior.)

Mr. Clark: Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Lindsay: Strike the answer for the time being.

Now, may I have that question?

(The question referred to was read by the reporter, as [168] set forth above.)

Trial Examiner Lindsay: He may answer.

The Witness: Yes.

Q. (By Mr. Mouritsen): When was the date of the next conference held in the Governor's office with reference to that picketing incident?

A. (Pause.) Well, on or about February 3rd, 1939.

Q. Was there any representatives of the Union present at that conference? A. Yes.

Q. Will you——

Mr. Clark (Interrupting): Just one moment. For the record, may it please the Examiner, may the objection that this meeting is immaterial and irrelevant in this case be deemed to run to all the questions involving this particular meeting?

Trial Examiner Lindsay: Yes. He may answer.

The Witness: Yes.

Q. (By Mr. Mouritsen): Will you name the representatives of the Union who were present at the conference of approximately February 3rd, 1939?

A. Mr. A. H. Petersen of the American Federation of Labor, Mr. George Stokel and Mr. Ralph

(Testimony of E. F. Prior.)

Gettys of the California State Federation of Labor, and myself.

Q. Were there any representatives of the Associated Farmers of Kings County, Inc. present at this conference? [169]

Mr. Clark: Objected to as calling for a conclusion of this witness as to the capacity at which anyone appeared at that conference, and also incompetent, irrelevant and immaterial, and not within any of the issues of this proceeding as framed by the pleadings, and is based upon hearsay.

Mr. Mouritsen: I will withdraw the question.

Q. Mr. Prior, were there any gentlemen present at that conference who identified themselves as representatives of the Associated Farmers of Kings County, Inc.?

Mr. Clark: The same objection, your Honor; hearsay, and not binding upon this Respondent or the Respondent Associated Farmers, rather.

Trial Examiner Lindsay: He may answer. You may proceed.

The Witness: Could I have the question, please?

(The question referred to was read by the reporter, as set forth above.)

The Witness: No.

Trial Examiner Lindsay: We will adjourn until 2:00 o'clock.

(Thereupon, at 12:00 o'clock M., a recess was taken until 2:00 o'clock P. M. of the same date.) [170]

After Recess

(Whereupon, at 2:00 o'clock p. m., the hearing in the above-matter was resumed.)

Trial Examiner Lindsay: The hearing is called to order.

Mr. Wingrove: If the Examiner please, we have the District Attorney available now, if the Examiner cares to have him on now according to our understanding this morning.

Trial Examiner Lindsay: Yes.

Let the record show the District Attorney is now taking the witness stand, out of order, with consent of all parties.

ROGER R. WALCH,

called as a witness by and on behalf of the respondent, J. G. Boswell Company, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Wingrove): Your name is Roger R. Walch? A. That is right.

Q. You are the District Attorney of Kings County, California? A. I am.

Q. How long have you been District Attorney of this County?

A. Since January of 1935.

Q. Mr. Walch, do you recall having received a visit by a committee of the J. G. Boswell Company employees respecting a meeting or some trouble which had developed at the J. G. [171] Boswell

(Testimony of Roger R. Walch.)

Company plant in Corcoran on or about November 18, 1938?

A. Well, I don't know the date because I kept no record of the date. It was in the usual course of the day's business, but a group of gentlemen, four or five of them, came in to see me and said that they were employees working down at the Boswell cotton gin and consulted with me.

They said, during the conversation, that there had been a little misunderstanding that had arisen at the Boswell plant that morning. That is the only way I could fix any date.

Q. What did they say, the substance of the conversation? How many were there that you recall?

A. It seems to me there were around five. I don't know whether you realize that we run a great number of people through that office every day and we don't keep records of all little conferences that we have throughout the day and as I recall it, there must have been around five. That is just my recollection.

Q. Will you kindly state the conversation between you and this committee.

A. Well, the best I can.

Mr. Mouritsen: I object to the question upon the ground that insufficient foundation has been laid, the identity of the committee has not been established in any way. [172]

Trial Examiner Lindsay: Well, if you can tell the names of any of those who were there you may.

The Witness: No, I cannot give you the names

(Testimony of Roger R. Walch.)

because I don't know the gentlemen personally. No record was kept. I don't know—I had seen them about and they told me they were employees of Boswell and I have seen them around the plant.

Trial Examiner Lindsay: All right. You may answer. Read the preceding question.

(The record referred to was read by the reporter, as set forth above.)

The Witness: Well, Mr. Examiner, of course you understand that it can only be stated in substance, as it is that long ago.

Trial Examiner Lindsay: That is all we are asking of you.

The Witness: As I recall it, the gentleman started the conversation with the request as to what I knew about the Wagner Act and the possibility of the local employees forming an employees' union at the Boswell plant.

I told them that I was not familiar with the Wagner Act but that it was my understanding that employees of any organization could form their own employees' union if it was the desire of the majority of the employees so to do, or could select their own bargaining agency. [173]

They stated to me that they represented practically the unanimous feeling of the employees of the Boswell Company; that they didn't feel as though they desired to have an outside union coming; that there had been talk of the American Fed-

(Testimony of Roger R. Walsh.)

eration of Labor coming into the plant and they felt they would rather have their own bargaining agency.

They stated that there was some dissension, as I recall it, seven or eight men down there had been talking up an American Federation of Labor Union affiliate.

Trial Examiner Lindsay: Is that what they told you?

The Witness: Yes, that is what they told me. They gave me the whole picture. I knew nothing about it prior to that time except earlier in the morning I had received a call——

Trial Examiner Lindsay (Interrupting): We are not interested in that now.

The Witness: They asked me if I would represent them in the organizing of a union and I told them no, that as District Attorney I would take no part in a private capacity for any person in connection with labor matters; that I had to be unfettered when I was called upon to rule on labor questions.

I told them that I had been asked to represent other groups of men in the community in organizing an employees' union and that I had always turned that business down.

I told them that there were two local unions of employees [174] that had been organized recently in the County, and gave them the names, one of them being the Lucerne Creamery and the other the Caminol.

(Testimony of Roger R. Walch.)

I suggested that probably the attorney in the County that knew most about the Wagner Act was Attorney Clark Lament from Lemoore, and suggested if they were thinking of forming their Union, that he would be a good attorney to see.

I told them that if they wished, I would call up the Caminol and see if there was anybody down there a member of the organization there that could give them any information on how much it cost, how it worked, and how the organization was perfected; and they asked that I do so. And I called the Caminol and I got hold of the chief bookkeeper, as I recall it, and he said that he would see some of the boys and when the committee came down, if there were any there that could give them any help, they would be glad to do so.

During the conversation—that was all I guess, that there was concerning the organization of a Union, except that I asked them if Boswell themselves, the management, had anything to do with this; and they said no, that they didn't even know they were coming up to consult with me, that they were expressing the sentiment of the employees; that—I asked them what the reasons were, why they wanted their own, and not an outside Union in, and they said they didn't feel like paying tribute to an outside organization, that Boswell's [175] had always treated them right and their wages were satisfactory, and that they felt that inside of their own organization they could do better than having an outside bargaining power.

(Testimony of Roger R. Walch.)

That, in substance, was the conversation concerning that.

Then there was one other thing discussed at that meeting, and that was some trouble that had apparently taken place down here that same day that the committee came to see me.

Trial Examiner Lindsay: Well, “apparently taken place” is stricken.

Just tell what they told you about the trouble; not just a conclusion.

The Witness: As far as I know, it was apparent, because I wasn’t there.

Trial Examiner Lindsay: Did you understand what I instructed you to do?

The Witness: No.

Trial Examiner Lindsay: I said, “Tell what they told you about the trouble.”

The Witness: They told me that——

Trial Examiner Lindsay (Interrupting): The other is stricken.

The Witness: They told me that I had probably heard something about some trouble down there, and I said yes, I had received a call. What was it all about. [176]

They said—I have forgotten whether they said one or two men had been talking up the outside Union, the American Federation of Labor affiliate, and that they had gotten tired of the talk and didn’t want to be bothered with them, and that they had asked them to leave the premises.

(Testimony of Roger R. Walch.)

And I said, "Well, I understood that you had more than asked them to leave."

And they said, "Well, we did touch them."

I said, "Was anybody hurt? Did you use any force in the ejection of them?"

And they said, "No, nobody was injured. No force of any consequence was used."

I asked them if they had ejected them from the premises on the authority of the Boswell people, and they said, "No; Boswell hadn't done anything about it until it was all over."

And I instructed them that they had no power or authority to eject anyone from any one else's property, and that the only person would be the landlord of the property who could use force to move another person off of the premises, and I didn't want to hear any more of that kind of thing going on; that I didn't think it amounted to a great deal; that no complaint had been made at that time by any of the men or the individuals who later claimed that they had been evicted; and that as far as I was concerned, no formal complaint had come into my office, but that I wouldn't countenance the use of force by anybody. [177]

And that is all about, in substance, there was to that.

I haven't seen any of them since. They never came back.

Q. By Mr. Wingrove: Mr. Walch, are you acquainted with Mr. Prior?

(Testimony of Roger R. Walch.)

A. I am pretty well.

Q. Did you have a conference with Mr. Prior and another party in your office on or about January 21, 1939?

A. I don't remember the date. I probably would, but I have had lots of conferences with him, several of them anyway. [178]

Q. Did you have a conversation regarding some picketing with him regarding the Boswell plant at Corcoran?

A. Yes, I have had two or three with him. I think the first one was in my office. I don't remember the date, but Mr. Prior and one or two other men came in concerning it. And we had quite a long talk on the first occasion in my office. I don't remember who was with Mr. Prior, but I know Mr. Prior and I did most of the talking.

Q. Will you kindly state the substance of that conversation to the best of your recollection?

A. Mr. Prior said he wanted to meet me and I said I wanted to meet him, to start with.

And we talked about picketing and he wanted to know what his rights were to picket. And I believe I sent for and got a copy of the ordinance that we have in Kings County. And I believe I read portions of it to Mr. Prior. He can correct me if I am not true in this. We discussed it just in a friendly sort of way.

I read that and I made the remark to him at the time that we have a very strict ordinance. And he

(Testimony of Roger R. Walch.)

explained the type of picketing he was doing and I said, "Well, I can see nothing wrong with that type of picketing."

I particularly read over to him that paragraph in the ordinance that specifically allows a peaceful picket and said as long as that type of picketing is being followed there will [179] be no trouble between his people and our office and they were entitled to protection. I have told him that several times since but I would not countenance the use of force, nor would I permit the use of threats or violence. And I said the ordinance will be strictly construed. I think I said that to him.

And it still will be.

Q. Did he discuss with you at that time as to where they proposed to maintain picket cars, if any?

A. Yes, I believe Mr. Prior explained the method which he was operating under. And at that same conference I told Mr. Prior I could see nothing wrong with the method that was being used, that so long as his men were not on private property but were on the public right-of-way and while they were they didn't have a sufficient number to interfere with people going and coming along that right-of-way, and so long as he didn't have cars that were interfering with traffic along the right-of-way, and so long as they didn't use threats or force, that he wasn't violating the ordinance. I think that was discussed. I know it was later if it wasn't at that time, but I think we discussed it at that time, too.

(Testimony of Roger R. Walch.)

Q. Did you make the statement to Mr. Prior that your office—you or your office—would rule against him in each instance?

A. I did not. I wouldn't make such a statement. I told him [180] that the ordinance would be strictly construed.

Q. When was the next time that you met Mr. Prior?

A. I don't know. I don't know whether I met Mr. Prior again before I saw him after the first meeting at the Governor's office or not. I don't recall.

Q. Did you see him at the meeting at the Governor's office?

A. I saw him at Corcoran. There had been some report of trouble, and I came down, and Mr. Prior was there, as I recall it, and everything was going all right. We shook hands and I said hello. I saw him in front of the jail, but that was quite a bit later. And he shook hands with me and he said everything was peaceful and going along fine.

Q. Did you meet Mr. Prior later on at the Governor's office?

A. I met him, not on the first visit to the Governor's office, but on the second visit that I made to the Governor's office.

Q. When was that, if you recall?

A. Oh, I can't give you a date there, because—my file will show it, but I had no idea that we were going into those kind of things. I might get it out

(Testimony of Roger R. Walsh.)

of my file. The closest that I can place it is that Fulton called me one evening—

Q. (Interrupting): I will be glad to hand you a newspaper account purporting to be an account of the meeting at the [181] Governor's office and, perhaps, that will refresh your memory. I appreciate we called you on rather short notice here.

A. I presume you want just to fix the date.

Mr. Mouritsen: May I ask, Mr. Wingrove, what is the purpose of showing the paper to the witness?

Mr. Wingrove: Purely to refresh his memory, if it does refresh his memory, Mr. Mouritsen.

Mr. Mouritsen: As to what factual matters?

Mr. Wingrove: As to—more particularly the place and date of the meeting at the Governor's office.

Mr. Mouritsen: I have no objection to showing it to the witness purely for establishing the date of the conference only.

Mr. Wingrove: That is all.

The Witness: The letter I received from the Governor is in the paper and the date is on that letter. I have the original in my office, but I don't recall what date it is.

Q. By Mr. Wingrove: I believe it was on the 1st.

A. (Examining document): Yes, February 1st. Now it merely refreshes—

Mr. Mouritsen (Interrupting): Of what year?

The Witness (Continuing): —my memory so

(Testimony of Roger R. Walch.)

far that I know I have a letter, an original of the letter, carrying the same date.

Mr. Mouritsen: That is for the year 1939? [182]

The Witness: '39.

Q. By Mr. Wingrove: Does that fix the date in your mind?

A. It was around it there, and that letter carries the same date when I was at the Governor's office the first time.

Q. Why did you go to the Governor's office?

A. Well, the evening before I was down at the jail between 8:00 and 9:00 taking the statement of a prisoner and I received a call from Sacramento from, apparently, Mr. Fulton, the Governor's secretary. He said that he had received some complaint about a labor trouble down here and wanted to know what it was all about. I asked him who had reported it and I think he told me Mr. Prior had.

I gave him a little review of it and I said that it didn't look serious at that time, and told him that I would be glad to come to Sacramento and give him the picture first-hand. He thanked me and he said he would very much appreciate it if I would come up. So the next day the Sheriff and I went to Sacramento and there I talked to Mr. Fulton.

Q. And who was present at this meeting?

A. The Sheriff, Mr. Fulton, and one of his secretaries—I think a reporter—I don't remember the name and that is all—and the young lady in his office.

(Testimony of Roger R. Walsh.)

Q. Was Mr. Prior there?

A. No. He had been there earlier, according to Mr. Fulton, [183] but he was not there then.

Q. And what was discussed at this meeting?

Mr. Mouritsen: Mr. Wingrove, could we perhaps have the date of this more exactly.

The Witness: It was February 1st, 1939.

Q. By Mr. Wingrove: Was this labor trouble with the Corcoran plant discussed at that meeting?

A. Yes.

Q. Will you kindly state the substance of the conversation to the best of your recollection?

A. Well, Mr. Fulton asked me about it, asked what was the reason for the disturbance and what had transpired.

Q. Mr. Fulton, as I understand, was the Governor's secretary, was he not?

A. Yes. That is what he told me.

I explained it as much as I knew about it and told him that my sole interest was keeping peace and order in the community; explained the worry that I had, that unless some satisfactory solution was found for the trouble down there that I was afraid that the spark might be touched off and it would cause some bloodshed which is one thing I didn't want.

He asked me what I thought should be done. I told him that with the tenseness of the situation I thought it would be wise to stop the picketing until a hearing could be had before the National Labor

(Testimony of Roger R. Walch.)

Relations Board and he said, "Well, [184] I think that is a good idea. I will instruct Mr. Prior to withdraw the pickets."

I asked him if he wouldn't put that in writing so that I could take it back. He said yes, that he would. So he went out and dictated a letter for me, and made up an extra copy of it and asked me to deliver the copy to Mr. Prior, which I did, after I arrived home the following day.

Q. You delivered the letter the following day?

A. Well, I think it was the following day. I tried to get hold of him and we finally got together. I think it was the following day or the day after, just as soon as I could get ahold of Mr. Prior. I left word down at Corcoran for anyone who saw him to tell him to drop up to the office and he did and I gave him a copy of the letter.

Q. Where is the original of this letter?

A. In my files.

Q. You don't have it with you?

A. No. I could send and get it if you want it. I think Mr. Prior will recall the letter.

Mr. Wingrove: Mr. Examiner, may I be permitted to ask Mr. Prior if he has a copy of the letter or, on Mr. Walch's statement, we will be glad to get the original. We have a copy of it in the paper.

Mr. Mouritsen: I believe we have a copy of the letter itself. [185]

The Witness: I gave him a copy of it. I could tell if it was a copy of the original.

(Testimony of Roger R. Walch.)

Trial Examiner Lindsay: It will be shown to you.

(Conference between counsel.)

Q. By Mr. Wingrove: Do you recognize that as being the letter just referred to, Mr. Walch, written by the Governor regarding the withdrawal of pickets?

A. That is a copy of the letter.

Mr. Wingrove: Mr. Examiner, I now offer—

Trial Examiner Lindsay (Interrupting): Have it marked for identification.

Mr. Wingrove: I request that this letter be marked for identification as respondent J. G. Boswell Company's No. 1.

(Thereupon the document above referred to was marked for identification as respondent J. G. Boswell Company's Exhibit No. 1.) [186]

Mr. Wingrove: May it be stipulated, counsel, that this letter may be introduced in evidence with the understanding that we will either substitute therefor the original, which Mr. Walch now has in his files, or else we will furnish, in lieu thereof, a copy of this letter to Mr. Prior?

Mr. Mouritsen: Mr. Wingrove, without putting myself in the position of counsel for the Respondent, when I offered a document of the same type, to which a strenuous objection was made this morning—however, I make no objection to the introduction of the letter, a copy of it.

(Testimony of Roger R. Walch.)

Mr. Wingrove: I then ask that the copy of the letter marked Respondent's J. G. Boswell Exhibit No. 1 for identification, be admitted in evidence.

Trial Examiner Lindsay: It may be admitted.

(Thereupon, the document above referred to was received in evidence and marked as Respondent's J. G. Boswell Exhibit No. 1.)

Mr. Mouritsen: If I may ask Mr. Walch one question about the letter that I think should be cleared up.

I note that in the upper left-hand corner there appears to be some writing in pen which does not appear to be a part of the original letter.

Do you know who that was that placed it on there?

The Witness: Yes, sir, Mr. Fulton wrote that.

Mr. Mouritsen: Did you see him do it? [187]

The Witness: Yes.

Q. By Mr. Wingrove: What else, if anything, was said at this meeting with Mr. Fulton, Mr. Walch, that you recall?

A. I don't recall anything else——

Mr. Mouritsen (Interrupting): Just a moment. I object——

The Witness (Interrupting): Oh, pardon me. Wait just a minute.

Mr. Mouritsen: I withdraw the objection.

The Witness: One remark was made that he was sorry that Mr. Prior wasn't still there, that he had been there earlier and he would like to have had us both together.

(Testimony of Roger R. Walch.)

I said that I didn't know that Mr. Prior was coming, and he said, "No, I know you just came up here out of your own courtesy. We didn't arrange any meeting," but we both regretted that Mr. Prior hadn't been there at the same time so it could have been ironed out then.

Q. By Mr. Wingrove: Was this telephone conversation you received the night previous from the Governor's Secretary the first notification or request which you had received to attend the hearing before the Governor?

A. That wasn't even a request. That is the first word I had from the Governor's office, and that wasn't an order or request. I offered to go up there and explain it in person, and he thanked me and said he would like to have me do that.

Q. When did you next meet with Mr. Prior, if you recall? [188]

A. Well, when I delivered this copy of this letter; that was at my office.

Mr. Mouritsen: That is Respondent's Exhibit 1?
The Witness: That is correct.

Q. By Mr. Wingrove: Did you at any time later meet with Mr. Prior at the Governor's office?

A. I did.

Q. When was that?

A. Within a week, I think. I don't recall the exact date.

Q. Within a week after February 1, 1939?

A. Well, when I delivered the letter to Mr. Prior, he acted very much surprised——

(Testimony of Roger R. Walch.)

Mr. Mouritsen: I object to the statement of the witness and move that it be stricken as a conclusion.

Trial Examiner Lindsay: Well, it may remain.

The Witness: The next thing I heard was a request—I have forgotten how it came, whether it came by letter or by telephone—for another conference in the Governor's office, and at that meeting Mr. Prior was present, among others.

Q. By Mr. Wingrove: And who else was present as you recall?

A. Well, there was a large group. There was the Sheriff of Kings County, and there were three farmers from Kings County; there was Mr. Prior; there were two or three Union officials from Fresno; there was a Union official from up around Sacramento or up North; there were one or two other Union officials whom I don't know, either their names or where they were from, only one man whose name I remember very well, that was a fellow about my size with a red shirt by the name of Petersen. He claimed to be the West Coast representative of the A. F. of L.; Longshoremen.

Q. And what was said at that conference or meeting?

A. A lot of things were said.

Q. That you recall?

A. Well——

Trial Examiner Lindsay (Interrupting): Try and give us the substance.

The Witness: I am trying to. There were so many people there and so many things said——

Trial Examiner Lindsay (Interrupting): If you don't remember, let us eliminate it.

(Testimony of Roger R. Walch.)

The Witness: Well, this fellow, this man Petersen, started right in when I got in the room and accused the law enforcement officers of not protecting Union people, which, of course, was denied.

I again explained, as clearly as I could, the position that the Sheriff of Kings County and myself were taking in these labor troubles.

Mr. Mouritsen: Mr. Examiner, I move to strike that as a conclusion of the witness, and request that the witness be instructed to state what he said regarding the position taken. [190]

Trial Examiner Lindsay: Yes. You understand the situation, Mr. District Attorney. Tell us what you said there, about anything that you said, or anything about it.

The Witness: I will tell you some of the conversation that is very clear in my mind.

Trial Examiner Lindsay: That is exactly what we want.

The Witness: This fellow Petersen pointed his finger at me and said, "We are going to picket in your County whether you like it or not, and you are not going to be able to do anything about it; if we have to bring in 1600 men, we will."

A labor man from Fresno, behind him, said, "Yes. If we have to bring in sixteen thousand we will, and if you want civil war, we will have that too."

And I told him to take his finger down and quit pointing it at me; that it wouldn't do him any good as I was still the District Attorney of Kings County

(Testimony of Roger R. Walsh.)

and that kind of talk wouldn't get him anywhere, that we are going to preserve law and order in our County.

I walked out of the meeting for a few minutes.

Then, when I came back, things kind of quieted down, I guess, and I told him that I had no objection to peaceable picketing, but that I wouldn't countenance the use of force or violence. It seemed to me that they ought to be able to settle their question between them down there without trouble.

Trial Examiner Lindsay: That is what you told them?

The Witness: Yes. [191]

Trial Examiner Lindsay: All right.

The Witness: And some question was raised about how long it would be before the National Labor Relations Board could hear the case. I have forgotten who spoke about that. Oh, there was a representative of the National Labor Relations Board at that meeting and he said that you were so busy it would be some time before a hearing could be called here. It was a young man at that hearing. I have forgotten his name, a very pleasant young fellow.

Trial Examiner Lindsay: Change "hearing" to "meeting," is that correct?

The Witness: Yes.

Q. By Mr. Wingrove: Do you recall whether this National Labor Relations man was Mr. Larson? Is that his name?

Mr. Mouritsen: I think the Board will stipulate

(Testimony of Roger R. Walch.)

that the representative of the Board present was Drexel A. Sprecher.

The Witness: That is who it was.

Mr. Mouritsen: Sprecher was present, if such a stipulation is satisfactory.

The Witness: That is correct.

Mr. Wingrove: I didn't know.

Trial Examiner Lindsay: You agree to that stipulation?

Mr. Clark: The witness has so testified now.

The Witness: That is his name. [192]

The last thing that I knew of that was talked about at that meeting was that I think Fulton suggested, himself, that we call for a meeting down in Hanford and try and get representatives of the farmers and of the union officials at that meeting and see if we couldn't iron our own problems out and I believe that before we left the meeting we decided on a date and a time and I think we even decided on the approximate number that each group would have at that meeting at Hanford and where it would be held. I think that is the way the meeting ended.

Q. By Mr. Wingrove: Was there a reporter present at this meeting in the Governor's office, or do you recall? A. I think there was.

Q. Did you ever receive a transcript of the testimony? A. No.

Q. Well, was this meeting suggested by Mr. Fulton subsequently held? A. It was.

Q. When and where?

(Testimony of Roger R. Walch.)

A. It was held in the Civic Auditorium in Hanford. Again I would have to refer to my file as to the dates, because I had no idea, Mr. Examiner, that these things were all going to be gone into.

Trial Examiner Lindsay: I understand.

The Witness: But it was—I think Mr. Prior will know— [193] we have a transcript of the meeting.

Mr. Wingrove: For the purpose of refreshing his memory, solely for the matter of the date, I will hand you what purports to be a transcript of that hearing——

Mr. Mouritsen (Interrupting): We will stipulate that the date was February 7, 1939.

Mr. Wingrove: It is stipulated as to the date.

Q. Did you attend that meeting?

A. I did. I presided at the meeting.

Q. Who else was there? Who was present that you recall?

A. Again each time we are getting to larger groups. The Sheriff, of course, was there. I believe there was a representative of the City Police of Corcoran and I think there was of Hanford and I requested the presence and paid for the presence of a court reporter, Mr. Lawrence Short, as I felt in a meeting of that kind everything should be taken down as said and then there wouldn't be any misunderstanding.

There were newspaper reporters present and George Wade was one of those. There was a representative there from the pressroom of the Fresno Bee,

(Testimony of Roger R. Walch.)

I think Mr. Towne. Mr. Prior was there and then one side of the room was devoted to union officials from various portions of the state and on the other side of the room were farmers. There were a large number of each—farmers of Kings County.

For the farmers I believe Mr. Filcher was the spokesman [194] at that particular meeting. For the union my friend Mr. Petersen was there again and, of course, Mr. Prior and the same union official from Fresno. The transcript will show their names because I asked that each man introduce himself and give his affiliation, and the transcript carries it all. It carries every word that was said at that meeting.

Q. By Mr. Wingrove: Kindly state the substance of what was said, Mr. Walch, to the best of your recollection.

Mr. Mouritsen: Do you have a certified copy of the transcript? Perhaps we could save time by putting it in the record. It was a meeting that we all remember and we could look it over.

Mr. Wingrove: Are you asking to have a copy of the transcript put in evidence?

Mr. Mouritsen: I beg pardon?

Trial Examiner Lindsay: Was the transcript certified to by the reporter?

The Witness: I have forgotten whether mine is in my office. I doubt it. I know I had several copies made up, but I don't know whether mine is certified or not, and the reporter—of course, I did it just as a precautionary measure—

(Testimony of Roger E. Walsh)

Trial Examiner Lindsay: Intervention doesn't make any difference way you do it.

The Witness: It does to me.

Trial Examiner Lindsay: The question is whether it is certified or not. [195] May I see that transcript?

Mr. Clark: Here is a copy of it, your Honor.

On behalf of the Associated Farmers of Kings County, Inc., I am going to object to the introduction of the transcript in evidence as being incompetent, irrelevant, and immaterial. I don't see the purpose of it in this proceeding, particularly in view of the fact that, as I understand it, the subject was picketing between the peace enforcement officers and the farmers of the county whose produce was subject. I suppose to the picket.

Is that right, Mr. District Attorney?

The Witness: That is what the meeting was about.

Mr. Clark: It didn't involve the rights of any employees of Boswell & Company, as I understand it.

The Witness: At that meeting there was nothing discussed concerning the question of whether there should be a local bargaining agency or the A. F. of L. affiliate.

Mr. Clark: I think it is beyond the jurisdiction of the Board, your Honor.

The Witness: It concerned purely a picketing question.

Mr. Clark: To save time, I just want my objection to be of record.

(Testimony of Roger R. Walch.)

Trial Examiner Lindsay: First of all, it hasn't been offered as yet, Mr. Clark.

Mr. Wingrove: I have no intention, Mr. Examiner, of offering it. [196]

Trial Examiner Lindsay: If you will kindly wait until the document is offered to make your objection in the record, then the record is in nicer shape.

Mr. Clark: I thought it had been offered.

Trial Examiner Lindsay: No.

Mr. Wingrove: No further questions.

Cross-Examination

By Mr. Mouritsen:

Q. Mr. Walch, I understand you to testify that you are the District Attorney of Kings County?

A. Yes.

Q. That you have held that office since 1935?

A. That is correct.

Q. You are therefore well acquainted with the duties of the office of District Attorney?

A. I believe I am.

Q. Prior to the time when you became District Attorney of Kings County, did you ever work in Sidney Sharp's office? A. I did.

Q. During the time that you worked in Sidney Sharp's office, did Sidney Sharp handle the business for J. G. Boswell Company? A. He did.

Q. Did you personally ever handle any of the business of J. G. Boswell Company while you were in Sidney Sharp's office? A. I did not.

(Testimony of Roger R. Walch.)

Q. Now, Mr. Walch, will you outline, briefly, for us, what [197] the duties of the District Attorney of Kings County are? A. In what respect?

Q. With respect particularly to protection of the civil liberties of the inhabitants of Kings County?

A. Preserve law and order.

Q. Now, if a man is not engaged in any illegal act, he is entitled to the protection of your office, is he not? A. Absolutely.

Q. And if it is brought to your attention that an illegal act has been committed whereby residents of the County are deprived of their civil liberties, it is your duty to protect those people and see that they obtain their civil liberties, is it not?

A. That is a pretty broad question. In the main, I would say yes. Have you ever been a District Attorney?

Trial Examiner Lindsay: You just answer the questions.

The Witness: Of course, you realize I am being put at rather a disadvantage here.

Trial Examiner Lindsay: Just a moment. If you don't understand the question we will explain it.

The Witness: I understand it. I understand the purport behind it.

Trial Examiner Lindsay: Read the question.

(The question referred to was read by the reporter, as set forth above.) [198]

The Witness: Mr. Examiner, I am afraid I don't

(Testimony of Roger R. Walch.)

quite understand how far he means to cover the scope by civil liberties. It is pretty hard to answer that in that fashion. In the main, I would say yes, by all means, but just how far that goes, I don't know.

Q. By Mr. Mouritsen: Very well.

It is one of the inalienable rights of a citizen that he has a right to petition, is it not; that he has a right to present any grievance that he has, to his fellow citizens; isn't that included in the right to petition?

Mr. Clark: I object to that, may it please your Honor, on the ground it calls for a conclusion of the witness, and mis-stating the rule of the civil liberty in question. I presume it calls for the right of free speech, and we have that under the Constitution so long as we are responsible for its abuse; and it calls into issue the very anti-picketing ordinance of this County that this gentleman has testified to in his direct examination.

I object to the form of the question, your Honor.

Trial Examiner Lindsay: He may answer it, and you may have an exception.

The Witness: What was the question?

(The question referred to was read by the reporter, as set forth above.)

The Witness: Provided in the presentation he abides by [199] the laws.

You see, those are so hard to answer unless you get your particular set of facts.

Trial Examiner Lindsay: Just a moment.

The Witness: I didn't mean that to be funny.

(Testimony of Roger R. Walsh.)

Trial Examiner Lindsay: I didn't say you did, Mr. District Attorney.

Let us have an understanding—this may be off the record.

(Discussion outside the record.)

Trial Examiner Lindsay: On the record.

The Witness: May I explain, your Honor?

Trial Examiner Lindsay: Yes. No one took that to be funny at all, I am sure.

The Witness: In that office, we deal with a lot of cold facts, and each case depends on its own set of facts, and in answering legal questions in the abstract, even as far as District Attorney's duties are concerned, it is very difficult to do.

Q. (By Mr. Mouritsen): Very well.

I will ask you if the right of free speech is not one of the inalienable rights that a man is entitled to as long as he does not commit any illegal act in the exercise of that right?

Mr. Clark: I will object to it as incompetent, irrelevant and immaterial, if it please your Honor, and beyond the issues [200] of this case. We are not involved in the legality of the picketing, I understand. Mr. Prior has abided by the picketing ordinance.

Trial Examiner Lindsay: He has a right to cross-examine this gentleman, and he may answer and you may have an exception.

Mr. Clark: Very well. I would like to add, it is

(Testimony of Roger R. Walch.)

beyond the scope of the direct examination. [201]

The Witness: What was the question?

(The question referred to was read by the reporter, as set forth above.)

The Witness: Yes, so long as—I presume you mean by that that he doesn't make seditious utterances and things of that nature.

A man hasn't a right to speak his piece civilly providing he is trying to do so to the injury and defamation of people's character and things of that kind.

In the main, yes.

Q. (By Mr. Mouritsen): Mr. Walch, I don't believe you follow my question.

I stated whether or not in the exercise thereof he did not commit an illegal act.

A. Yes, and provided that—well, I guess you would say yes.

Mr. Clark: Of course, confined to the United States, too.

Q. (By Mr. Mouritsen): Now, you testified that on the 18th of November, 1938, a number of the employees of the Boswell Company came in to see you, is that correct? A. Yes.

Q. Did they not bring to your attention a violation of the laws of the State of California in that a number of men had been forcibly ejected from the Boswell Company's plant? [202]

A. Well, they brought to my attention a situation that had occurred. I didn't feel that it was

(Testimony of Roger R. Walch.)

of such a serious nature that it warranted any further action unless it was followed through. It is just like I might call you a vile name, but certainly you are not going to prosecute me for that if you can't take care of yourself on it.

Q. And on the 21st of January or thereabouts you had a conference with Mr. Prior in which you outlined to him what constituted legal picketing under the Kings County ordinance? A. Yes.

Q. After January 30, 1939, was any appeal ever made to you to protect the pickets in their lawful picketing?

A. I think so, because I know that the Sheriff and I went down and asked Mr. Prior how everything was. Now, who made the request that we come down and look things over I don't know. I think—I know that one day I came down and the two boys that were sitting directly behind you were in the car and stopped and said hello. They were kidding about some nails being in the road and we talked back and forth; and everything was peaceful then.

I try to keep my hand on the situation from all sides.

Q. I mean directly after. You are acquainted with the incident of January 30, 1939?

A. Yes.

Q. Within a day or so of that time, was any appeal made to [203] you?

A. Pardon me. I misunderstood you. Mr. Prior came in with one individual and likewise told me about the incident.

(Testimony of Roger R. Walch.)

Q. And did Mr. Prior request that some protection be afforded these pickets?

A. Yes, and I told him it would be.

Q. And was any protection ever afforded these pickets by your office?

A. As far as we were able to. All officers were instructed to see that there was no interference with them as long as they remained peaceful.

Q. Was any action ever instituted against your office against any of the individuals who drove these pickets from the Corcoran plant?

A. No, no request for a complaint was ever made.

Q. Was any action ever taken by you to protect these pickets before the conference was held in the Governor's office?

A. Just the instructions that I have told you about. Of course, you realize that the Governor's conference, the first conference, was right shortly following the receipt of the complaints, as I remember it, that there was trouble.

For your information and in furtherance to that question, every officer, including the officers of the City of Corcoran, received identical instructions that the pickets were entitled [204] to protection just as anyone else was so long as there was no violation of the law, but violations would not be tolerated by anybody; and those, I think, were given at the very inception and were made from time to time all the way through.

(Testimony of Roger R. Walch.)

As a matter of fact, at the meeting in my office when the ordinance was read to Mr. Prior, I spoke to Mr. Prior and told him that I thought it would be a very excellent idea if I got the chief of police of Corcoran on the wire and—so that he could listen in on the conference between Mr. Prior and myself so that when I gave my interpretations of the ordinance and the law to Mr. Prior, Mr. Springer would hear it first-hand, and there would be no misunderstanding between the three of us.

Now, I think Mr. Prior will verify that I called Mr. Springer at his home—he was ill at home—and asked him to stay on the wire while Mr. Prior and I talked back and forth about the situation. And everything I told Mr. Prior was heard by Mr. Springer. [205]

Q. During this period, was any complaint ever lodged with your office that the picketing was illegal?

A. Yes, yes. I went down there on one occasion—that is the time, I think, that I saw these two boys—I went down there on one occasion when they said there was a whole line-up of cars that were blocking the driveway. And I went down and found just the one car. And I asked the boys that were in the car about it, and they said that it was one of the boys' brother that came up and passed a few words. And I said, "that is perfectly all right. We are bound to have visits back and forth, but that wasn't the way it came to me."

Whether it came from either side, I came down

(Testimony of Roger R. Walch.)

to see if it was true or untrue, and to keep things in order.

Q. Do you recall who made that complaint to you when you did make an investigation?

A. No, it wasn't a city officer. It was a private individual.

Q. Do you recall whether his name was Forrest Riley?

A. No, it wasn't Riley. I know Forrest Riley.

Q. Was it E. C. Salyer?

A. It might have been E. C. E. C. called me once. Whether it was E. C. that called me on this occasion or not, I don't know, but E. C. called me once.

Q. And how long after he called you was it before you made the investigation?

A. Immediately; within the same day, I mean by that, because [206] I never can get away right away. It was the same day, and I came down and got ahold of John Thompson, the acting Chief.

And he said, "Well, it seems funny they wouldn't notify me. I haven't heard anything about it."

He said, "Let us go down and see."

We went down and saw the boys.

Q. Was that the only occasion when you came to Corcoran and went down to the picket line, the one you have already described?

A. No, I was down there once on one other occasion when it first started. I think it was the first time Mr. Prior came in. Following that, I was

(Testimony of Roger R. Walch.)

down to look things over. I think shortly following our conference. Whether it was the same day or the following day, I don't know.

Q. Do you recall the date?

A. No, I don't. I didn't keep a record, much.

Q. Was it before or after January 30th, 1939?

A. January 30. It was before the Governor's conference, but that was in February. It was the first of February, as I recall, so it had been before that, yes.

At that time, so you will have the whole picture to the best I can give it to you, at that time Mr. Prior was here. We talked about it, and then I went over to the Boswell office and talked with them about it. I think I talked with Mr. Louie Robinson. I told him that the picketing, the manner in [207] which it was being conducted, was lawful. Mr. Robinson said "We have no fault to find with the way it is being conducted." He said, "We don't want any trespass."

And I had already told Mr. Prior that trespass could be prevented by a landowner. As long as they were on the public way, it was all right.

Mr. Mouritsen: I think that is all.

Trial Examiner Lindsay: Anything else?

Mr. Clark: None from us, Mr. Examiner.

Trial Examiner Lindsay: Any further questions?

Mr. Wingrove: None from us.

Trial Examiner Lindsay: I have one or two.

(Testimony of Roger R. Walsh.)

Q. What do you mean by this statement, "Trespass could be prevented by a landowner?"

A. I mean just what the law is on trespass, that a landowner can prevent his property from being trespassed upon.

Q. In what way?

A. By the use of force, if necessary.

Q. How much force?

A. I hardly think that that is pertinent to this case, Mr. Examiner, and I don't want—you are calling for a conclusion of law from me. Do I have to answer that?

Q. You don't mean to give the impression that the owner of property, in order to prevent trespass, could physically injure one who is committing trespass? [208]

A. Yes. There is one kind of trespass where he can. If you are an attorney, you know that as much as I do.

Q. You don't mean you could actually kill a trespasser?

A. It depends on the type of trespass. If he is trespassing on his home and family, he can kill him, even.

Q. Ordinary trespass?

A. He can use physical force to evict.

Q. How much force?

A. You ought to know.

Q. I am asking you.

A. Such a force as is reasonable.

(Testimony of Roger R. Walch.)

Trial Examiner Lindsay: That is all.

Mr. Clark: I would like to ask one question there.

According to the rule in this State, isn't it a fact that the landowner has the right to use the degree of force necessary to reasonably eject the trespasser from his property?

The Witness: That is correct, as I understand it.

Trial Examiner Lindsay: That is all I was trying to find out from you, what your statement of law is.

Mr. Clark: We have some antiquated rules of law that still exist here.

Trial Examiner Lindsay: Witness excused.

(Witness excused.)

Mr. Clark: May I ask the Examiner for a recess? It is past 3:00 o'clock. [209]

Trial Examiner Lindsay: Yes.

(At this point, a short recess was taken, after which proceedings were resumed, as follows:) [210]

Trial Examiner Lindsay: The hearing is called to order.

E. F. PRIOR

the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and further testified as follows:

(Testimony of E. F. Prior.)

Direct Examination

(Continuing)

By Mr. Mouritsen:

Q. Mr. Prior, before the noon recess, I believe we were discussing the second conference in the Governor's office and I believe that you stated the names of the representatives of the union who were present.

Will you now please state the other people who were present at that conference?

A. As near as I recall, there were three farmers, Mr. Roy Filcher, Mr. Forrest Riley, and a gentleman by the name Mr. Wilbur, Mr. Kenneth Fulton, secretary to Governor Olson, and Mr. Hessian of the Attorney General's office; Mr. District Attorney Roger Walsh of Kings County, Sheriff Loftis of Kings County, and a gentleman representing the State Labor Department whose name I don't recall, and I think there was a secretary of Mr. Fulton, a lady, in the room; and there were many others I don't recall.

Q. At that conference was anything said regarding the picketing incident of January 30, 1939?

A. Yes.

Q. Without stating any of your own conclusions, will you [211] state, generally, what was said at that conference?

Mr. Clark: Objected to on the ground of hearsay as to Associated Farmers of Kings County.

Trial Examiner Lindsay: He may answer.

(Testimony of E. F. Prior.)

The Witness: Mr. Fulton stated the purpose of the meeting and asked the parties present to state the trouble.

I stated that the two pickets had been ran off of the picket line by some 200 farmers who identified themselves as being Associated Farmers; that we felt that our rights were being infringed upon; that I had discussed the situation with the District Attorney and that he had informed me that the facilities available for the District Attorney's office and the Sheriff's office were inadequate to meet the situation in case there was a flare-up between the union and the farmers, to which Mr. Walch stated that we had had such a conference and that he had informed me that he felt it was to the best interests of the citizens of Kings County to avoid possibility of causing any further feeling that the picketing be discontinued and that if there was a serious disturbance, that might lead to bloodshed, that the Sheriff's office and the District Attorney's office would probably be unable to cope with the situation.

Mr. A. H. Petersen asked the District Attorney if he understood the District Attorney to be saying that the law enforcement agency of Kings County was unable to protect the [212] rights of law-abiding citizens.

After that there was considerable fast and hot discussion between Mr. Petersen and the District Attorney, too fast for me to keep up with it, and

(Testimony of E. F. Prior.)

the District Attorney Walch did indignantly get up and walk out of the meeting.

Mr. Hessian of the Attorney-General's office asked Mr. Sheriff Loftis to go out and call him back. Sheriff was out for a while and came back and said that he could not find Mr. Walch.

Mr. Hessian then left and in a few moments he and Mr. Walch returned.

Mr. Fulton asked the three men claiming to represent the Farmers of the Corcoran District what their interests were in the labor dispute between the Boswell Company and the union. They stated that they had cotton that was kept being tied up in the cotton yard in the Boswell Company and that the farmers working felt that they had every right to market their produce.

The three gentlemen named as farmers there were asked by Mr. Fulton if they had cotton in the Boswell yard. All three said that they did not.

I stated that any farmer who had cotton in the yard of the J. G. Boswell Company and who would identify it as being his cotton, and free of encumbrances of the Boswell Company, that the union would not only agree that it be moved but would [213] assist in seeing that it reached its terminal.

Mr. Petersen suggested that the whole matter be submitted to an impartial board of arbitration and none of the parties there agreed to the arbitration.

Then a discussion was had about having a meeting in Hanford. 'The approximate number of ten

(Testimony of E. F. Prior.)

representatives for each group to attend this meeting, and that the Boswell Company be invited to attend the meeting. The date was set for February 8, 1939, I believe at 7:30 p. m. That was agreed to by all parties and the meeting adjourned.

Q. I believe Mr. Walch testified regarding a meeting in Hanford after the conference in the Governor's office, and the date was fixed as February 7, 1938. You have identified the meeting as being on February 8, 1939. Was there any—were two such meetings held in Hanford after the conference in the Governor's office?

A. If I said February 8, I meant February 7. It was on a Tuesday evening.

Q. Was that conference held? A. Yes.

Q. And did you attend? A. Yes.

Q. And did other representatives of the American Federation of Labor attend?

A. Yes. [214]

Q. Who else was present at that meeting?

A. Could I have that?

(The pending question was read by the reporter, as set forth above.)

The Witness: It would be impossible for me to name each one that attended that meeting.

Q. By Mr. Mouritsen: Well, as I understand it, in the Governor's office arrangements were made to have representatives of the Farmers of Kings County and vicinity of Corcoran attend, is that right? A. That is correct.

(Testimony of E. F. Prior.)

Q. Were any such men in attendance, do you know? A. Yes.

Q. Approximately, how many?

A. Altogether there was approximately 30 people that attended the meeting that I could not identify as being members of the labor movement.

Q. Well, approximately how many people that you identified as being connected with the labor movement were present at that meeting?

A. Approximately 12.

Q. And was Mr. Roger Walch present?

A. Yes.

Q. At that conference was anything said regarding the picketing incident of January 30, 1939? [215] A. Yes.

Q. Without giving any of your own conclusions, will you state, in general, what was said at that meeting?

Mr. Clark: Objected to as hearsay on behalf of Associated Farmers of Kings County.

Trial Examiner Lindsay: He may answer.

Mr. Mouritsen: Just one question before you answer that.

Q. Were any representatives of the J. G. Boswell Company present at that meeting?

A. No.

Mr. Clark: Same objection to that on behalf of Boswell Company.

Trial Examiner Lindsay: He may answer.

The Witness: No.

(Testimony of E. F. Prior.)

Mr. Mouritsen: I will restate the question.

Mr. Clark: Yes. [216]

Q. By Mr. Mouritsen: Without giving any of your own conclusions, will you state, in general, what was said at this conference?

I will stipulate that counsel's objection may apply to this question.

Mr. Clark: Very well.

The Witness: Mr. Roger Walch reported the conference in the Governor's office, explained the purpose of calling the meeting.

Mr. Clark: May it please the Examiner, may we have what was said in explanation of the purpose, so long as we are going into it?

Trial Examiner Lindsay: Yes.

Q. By Mr. Mouritsen: State how he outlined the purpose of the meeting?

A. He told those present the purpose of the meeting was to have a large group of representatives present, and that all parties interested be given an opportunity to state their position so that everyone could go back among their respective groups and have a clear understanding of the situation that existed.

Then he called on the Union representatives to first state their position.

I repeated the statement that had been made in the Governor's office, to the effect that if any of the farmers were deal- [217] ing with Boswell Company, had cotton in their yard and the labor

(Testimony of E. F. Prior.)

dispute between Boswell and the individual farmers was affecting them, the Union would be very anxious if they would identify it and show that the Boswell Company had no control, mortgage or lien on the cotton, we would be very happy to assist them in moving the cotton out.

Then Mr. Ralph Gettys, vice-president of the State Federation of Labor, stated that the representatives of the various branches of the American Federation of Labor were in attendance there in a spirit of cooperation, and not one to argue and to try to create hard feelings; that he realized that the farmers could mass a large force as no doubt labor could mass a large force, but that, after all, that would not settle any of the issues, and if some plan could be suggested by anyone that would be agreeable to help this misunderstanding, that the representatives of labor would cooperate.

Mr. Roy Filcher, acting as spokesman for the committee of farmers, presented to Mr. Walch a letter, and passed copies, a number of copies of this letter, to some of the representatives of the Union, to the representative of the State Department of Labor, and requested that Mr. Walch read the letter. The text of the letter I cannot repeat.

Q. You say Mr. Walch read it? A. Yes.

Q. Will you tell us, from memory, what Mr. Walch read at that [218] time, as best you can remember?

Mr. Clark: Might I ask, is that the letter that is in evidence?

(Testimony of E. F. Prior.)

Mr. Mouritsen: No.

Mr. Clark: It is a further letter.

Objected to upon the ground it is hearsay, your Honor, incompetent, irrelevant and immaterial, and not binding on any of the Respondents in this matter.

Trial Examiner Lindsay: He may answer.

The Witness: As nearly as I recall, it started, "We, the farmers of Kings County, do hereby state our belief in law and order, and we are willing to assist in having law and order in this Commonwealth."

But in the last paragraph, as I recall it, they stated, "We feel that we have a right to raise and market our produce without interference from any force and we will defend that right to the best of our ability," and signed "The Farmers," and I don't believe there was any other identification but the signature.

Q. By Mr. Mouritsen: What next——

Mr. Clark (Interrupting): I move to strike that testimony out, may it please your Honor, on the ground it is incompetent, irrelevant and immaterial, in addition to the other grounds of the objection previously urged.

Trial Examiner Lindsay: The answer may stand. [219]

Q. By Mr. Mouritsen: What next happened at that conference, Mr. Prior?

A. That was all the conference. The farmers——

(Testimony of E. F. Prior.)

no, the farmers' committee then in a body got up and left the meeting.

Q. After that was anything further done or said at the meeting, as you recall?

A. There was discussion by several members of the labor group. The text of their discussion I cannot recall at this moment. I do recall this, that Mr. Walch stated that he and the Sheriff would do everything possible to help enforce the laws of the County, and he requested the cooperation of both the farmers and the Union to keep in touch with him and cooperate with him.

Q. Now, returning to the picketing incident of January 30th, 1939, at or about that time, did you make any attempt to get in touch with Mr. Walch after the incident had taken place?

A. The afternoon of January 30th, 1939, I went to Hanford to Mr. Walch's office. One of the girls in his office informed me that Mr. Walch was out and would not be back any more that day.

From there, I went to the Sheriff's office and was informed by the other Sheriff, whose name I don't recall, that Sheriff Loftis was out of town on a drowning—a recovery of some bodies, people who had drowned, and that he was not expected back into town before 5:00 o'clock. [220]

Q. After that time, did you make further efforts to get in touch with either Mr. Walch or Sheriff Loftis?

A. I called back to the Sheriff's office sometime

(Testimony of E. F. Prior.)

after 5:00 o'clock, and Sheriff Loftis had not yet returned to his office.

Q. And after 5:00 o'clock of what day?

A. Of January 30th, 1939.

Q. And 5:00 o'clock, was that in the morning or the afternoon? A. In the afternoon.

Q. Did you make any further attempt after that to get in touch with either Mr. Walch or Sheriff Loftis? A. Not that day.

Q. Well, did you subsequently?

A. (Pause.) On or about February 2nd, I called at Mr. Walch's office again.

Q. And did you on that occasion see Mr. Walch?

A. Yes.

Q. Did you have a conference with him?

A. Yes.

Q. Was anyone else present other than you and Mr. Walch?

A. Mr. Drexel Sprecher, attorney for the National Labor Relations Board.

Q. What did you say to Mr. Walch, and what did he say to you on that occasion?

Mr. Clark: Objected to, incompetent, irrelevant and immaterial, and hearsay; not binding on any of the Respondents [221] in this matter.

Trial Examiner Lindsay: He may answer.

The Witness: Mr. Walch told me that he had a message for me from the secretary of Governor Olson, and handed me a letter that has been entered into evidence, I think, as Respondent's Exhibit.

(Testimony of E. F. Prior.)

Q. By Mr. Mouritsen: I will show you Respondent's Exhibit 1, and ask you if that is the letter to which you refer?

A. (Examining document) It is.

Q. Continue with your conversation?

A. I read the letter, and after reading it I talked to Mr. Walch and made the statement that I did not agree with it; to which Mr. Walch replied that "I don't give a damn."

I replied to Mr. Walch that I didn't expect him to, but that I still did not agree with it, and I thought that I would again call Mr. Fulton and discuss the matter further; that according to his definition and interpretation of the picket ordinance of Kings County, that the rights of citizens of Corcoran were being violated by permitting any group to force another group to cease their lawful pursuit of anything that they might be doing.

Mr. Walch stated that he favored another conference with the Governor and see—thought that it would be a good idea to have all parties represented, and that if I did call Mr. Fulton to please call him back and let him know what arrange- [222] ment, if any, had been made for a further meeting.

With that, the conference ended.

Mr. Mouritsen: You may inquire.

Mr. Clark: Cross examination?

Mr. Mouritsen: Yes.

There is one matter. I wonder if counsel would be willing to let me withdraw this witness at this

(Testimony of E. F. Prior.)

time and have the cross examination later. I have a witness that I can probably finish today, and he is not going to be available after this time.

Mr. Clark: It is satisfactory to us, your Honor, and I suggest that the transcript in the same manner as agreed with respect to District Attorney Walch's testimony show the cross examination of Mr. Prior immediately following his direct examination, although we will have it all written up anyway at once.

Trial Examiner Lindsay: Off the record.

(Discussion outside the record.)

Mr. Clark: I suggest that the record show, if it does not already, that this next witness is being called out of turn by Mr. Mouritsen.

Trial Examiner Lindsay: Yes.

Mr. Mouritsen: Yes.

Trial Examiner Lindsay: That is agreeable to everyone?

Mr. Clark: So stipulated. [223]

(Witness temporarily excused.)

Mr. Mouritsen: Call W. R. Johnston.

W. R. JOHNSTON

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

(Testimony of W. R. Johnston.)

Direct Examination

By Mr. Mouritsen:

Q. What is your name?

A. W. R. Johnston.

Q. Where do you live? A. Hanford.

Q. Are you now employed? A. No, sir.

Q. Have you ever been employed by the J. G. Boswell Company of Corcoran? A. Yes, sir.

Q. When were you first employed by that Company? A. In September of 1937.

Q. And what work were you engaged to do at that time? A. Bale hauler.

Mr. Clark: I didn't get that?

The Witness: Bale hauler.

Q. By Mr. Mouritsen: And at what rate of pay were you engaged at that time?

A. 35 cents an hour. [224]

Q. What hours did you work?

A. From 12 to 18.

Q. How long did you continue to work as a bale hauler?

A. Up until January the 28th of 1938.

Q. What occurred at that time?

A. I had a leg injury.

Q. Did you at the time you injured your leg, cease or stop working for the Boswell Company?

A. Yes, sir.

Q. After January of 1938, you never resumed employment with the Boswell Company?

A. Yes, sir.

(Testimony of W. R. Johnston.)

Q. When did you next work for them?

A. Sometime in October, around the 20th.

Q. Of what year? A. 1938.

Q. And what work did you start to do then for the Company?

A. Well, the first day I helped in the branding pen of the stockyards there.

Q. What did you do after the first day?

A. Press helper on No. 4 gin.

Q. And what rate of pay did you receive then?

A. 35 cents an hour.

Q. And how many hours per day did you work?

A. Twelve. [225]

Q. How long did you continue in that position?

A. About seven days.

Q. And what did you then do?

A. I went to sewing and sacking seed.

Q. Was there any change in your rate of pay or hours of work? A. No, sir.

Q. How long did you continue that type of work?

A. Around two weeks, I imagine.

Q. And what type of work did you then do?

A. I went to work as a bale hauler again, a helper on a bale wagon.

Q. How long did you continue to do that type of work?

A. Up until the 17th of November, 1938.

Q. What occurred on—strike that.

Did your employment at that time with the J. G. Boswell Company cease? A. Yes, sir.

(Testimony of W. R. Johnston.)

Q. How were you notified of the termination of your employment?

A. Gordon Hammond came around and told me.

Q. Where were you?

A. I believe I was around at No. 1 and 2 gin.

Q. Other than Mr. Gordon Hammond and yourself, was anyone else present? [226]

A. No, sir. I don't recall anyone.

Q. What did Mr. Gordon Hammond say to you at that time?

A. He said, on account of the water and the shortage of the cotton crop, he would have to lay someone off, and he hated to lay me off, but then someone had to go and it was just as well to be me as anyone else, and that I wasn't laid off on account of the Union activity.

He said, "Some of them thought it was, but it wasn't."

Q. Are you a member of any labor organization?

A. Yes, sir.

Q. Of what organization are you a member?

A. The American Federation of Labor, the A. F. of L.

Q. Is that the Union of the American Federation of Labor with which Mr. Prior has been connected?

A. Yes, sir.

Q. And the Union that he was instrumental in organizing at the Boswell plant?

A. Yes, sir. [227]

Q. When did you become a member of that organization?

A. November 7, I believe.

(Testimony of W. R. Johnston.)

Q. Of what year? A. 1938.

Q. Prior to November 7, 1938, had you attended any meetings of the union? A. No, sir.

Q. After November 7, 1938, did you attend any meetings of the union? A. Yes, sir.

Q. Approximately how many?

A. One, I guess, one on the 16th of November, and one on the 17th.

Q. And the year? A. 1938.

Q. And have you since November 18, 1938, attended a number of union meetings?

A. Yes, sir.

Q. I believe you testified that you attended a meeting of the union on November 17, 1938?

A. Yes, sir.

Q. Prior to that meeting did you have any conversation with Eugene Clark Ely?

A. Yes, sir.

Q. Where did that conversation take place?

[228] A. At home, at his home.

Q. And was anyone else present at the time when the conversation took place?

A. Well, I don't recall. There was bound to be. There were—they were all in the room.

Q. Who else was there?

A. His folks and his brother, Elgin.

Q. And when you say his folks, you mean his father and mother? A. Yes, sir.

Q. Anyone else? A. Not that I recall.

Q. Now, what took place, or what conversation took place at that time.

(Testimony of W. R. Johnston.)

Mr. Clark: Objected to as hearsay, may it please the Examiner, and not binding on any of the respondents in this matter, being the conversation solely between this gentleman and some other person whose connection with the company is not shown.

Trial Examiner Lindsay: Show who Mr. Ely is.

Q. By Mr. Mouritsen: Do you know whether or not Mr. Eugene Clark Ely was employed at that time by the Boswell Company? A. Yes, sir.

Q. And was he employed at the time with the Boswell Company? [229] A. Yes, sir.

Mr. Clark: The same objection, Mr. Examiner.

Trial Examiner Lindsay: He may answer.

The Witness: Well, he told us that—his brother and I—that he would go to the meeting that night, the 17th of November, and we went home—well, he got in the car and he said he would be back. And he wasn't gone long until he come back and he said he wouldn't go. And I don't remember whether I asked him or his brother asked him why he wouldn't but he said he would rather not go, that there was liable to be trouble the next morning; he would rather not go, that he would wait until some other time.

Mr. Mouritsen: You may inquire.

Cross Examination

By Mr. Clark:

Q. Mr. Johnston, are you employed at the present time? A. What?

(Testimony of W. R. Johnston.)

Q. Are you employed at the present time?

A. No, sir.

Q. Where do you live, please?

A. Hanford.

Q. And for how long have you lived in Hanford? A. Oh, around a month.

Q. How long have you been a resident of California?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial. [230]

Mr. Clark: Admitted; it is preliminary.

Trial Examiner Lindsay: He may answer.

The Witness: Four years.

Q. By Mr. Clark: You were first employed by the Boswell Company in the fall of 1937, weren't you? A. That is right.

Q. Never had been employed by that company prior to that time, isn't that so?

A. That is right.

Q. All right.

May I have that book that was admitted in evidence?

Mr. Mouritsen: Board's Exhibit 3.

Q. By Mr. Clark: Your initials are what, please? A. W. R.

Q. Now, first let me ask you this, Mr. Johnston.

You started in your employment with the Boswell Company, then, at the start of the '37-'38 cotton season, is that true? A. Yes.

Q. In other words, in the cotton business and

(Testimony of W. R. Johnston.)

in that plant the season, the ginning season, starts along in September of the year, doesn't it?

A. Something like that.

Q. Some time in the fall? A. Yes. [231]

Q. And then the ginning and milling of cotton-seed oil extends over into the middle of the next year usually, doesn't it, along in June.

A. I couldn't say that far.

Mr. Mouritsen: I move to strike the answer. Objected to.

Mr. Clark: I withdraw the question, Mr. Examiner.

Q. At any rate, you have told us you went to work at the start of the '37-'38 season, that is true, isn't it? A. Yes.

Q. Do you remember that during that season there were a great many more men employed at the Boswell Company than there were during the last season, the '38-'39 season?

A. I couldn't tell much difference.

Q. You couldn't tell much difference.

Wouldn't you say, Mr. Johnston, there were twice as many men employed during the season when you went to work as there were during the past season when your employment ceased?

Mr. Mouritsen: Objected to as indefinite, what season, and so forth.

Mr. Clark: It is clear.

Trial Examiner Lindsay: He may answer.

(Testimony of W. R. Johnston.)

Q. By Mr. Clark: Do you understand the question? A. No. I would like to have it read.

Q. I will ask it again. [232]

Isn't it a fact that during the first season when you went to work at the Boswell Company, which started in 1937, that there were practically twice as many men employed as there were during the season you last worked there, that is, the season when you last worked there last year?

A. I don't think so.

Q. Would you say there were more men employed during the last season than there were during the first season you worked there?

A. I wouldn't know.

Q. Did you notice any difference at all in the number of men employed there?

Mr. Mouritsen: I object to this question. We already have better evidence available as one of the Board's exhibits that counsel holds in his hand.

Mr. Clark: I am testing this witness' recollection.

Trial Examiner Lindsay: You may answer.

Mr. Clark: You may answer the question.

Q. Did you notice any difference in the men employed during the two years that you worked there?

A. I don't think I did.

Q. Very well.

Now, I want you to follow with me, Mr. Johnston, down through a page which we can identify by calling attention to your social security num-

(Testimony of W. R. Johnston.)

ber, being 572-01-4249, in Board's [233] Exhibit 3, which is a record of the Boswell Company. And you will notice that this page is headed with your name, W. R. Johnston.

It is a fact, isn't it, that you went to work, first went to work for the Boswell Company, on September 3, 1937, isn't that true?

A. That is about right.

Q. And on the first occasion you worked the week ending September 23; then the following week, September 30; then the following, October 10, through the week ending October 14, and straight on through until February 3 of 1938; or a period from September 9 of 19—from September 23 of 1937 through until February 3 of 1938.

That was the first time you worked?

A. If I may, can I explain that.

Q. You can explain any answer that you want to explain, Mr. Johnston, and I want you to know, too, we aren't holding you to specific dates.

A. I am positive of the 28th, because that is the day my leg was hurt. That was the last day of the pay date or the day before—I was hurt on a Friday—and it was the next week that they paid me for that.

Q. What date? A. The 20th, 1938.

Q. I understand that. [234]

It is a fact, isn't it, that you were employed by the Boswell Company from September 23 of 1937, this being the first occasion of your employment, up until—through the month of January of 1938?

A. Yes, sir.

(Testimony of W. R. Johnston.)

Q. Isn't that true? A. Right.

Q. And then you ceased your employment?

A. That is right.

Q. How long did this leg injury keep you in an unfit condition?

A. Well, it practically kept me out ever since.

Q. What kind of work did you do during the period of September, 1937, through January, 1938, which is a period of about four months, being the first time you were employed with the Boswell Company?

A. I was in Bakersfield.

Q. What kind of work did you do while you were employed by Boswell during that four months?

A. Bale hauler.

Q. What do you do as a bale hauler?

A. Handled bales of cotton and haul from the gin to the yard and to the truck.

Q. Have you done that work before going to Boswell?

A. Yes. [235]

Q. Where? A. Fresno.

Q. And for how long had you done that kind of work?

A. Around two months.

Q. About two months?

A. About two months.

Q. And what previous experience had you had beyond that in hauling bales for cotton gins?

A. Not any.

Q. None at all? A. No.

Q. And you had two months' experience in that and you went to Boswell?

A. Yes.

(Testimony of W. R. Johnston.)

Q. During this four months' period from September 23 of 1937 up to February 1, we will say, approximately, of 1939, were you employed as a bale hauler all of the time straight through?

A. Yes, sir.

Q. You were? A. Yes.

Q. And for how long after—withdraw that.

Is your leg in such condition that you are able to do that work at this time?

A. I couldn't at present. [236]

Q. You can't at present.

And you haven't been able to engage in that particular job at all since your leg was hurt in February of 1938, isn't that true?

Mr. Mouritsen: Objected to as incompetent, irrelevant, and immaterial, calling for a conclusion of the witness.

Mr. Clark: I think it is quite important. I am asking him for a physical condition.

Trial Examiner Lindsay: Read the question.

Mr. Clark: The question is garbled. I will repeat it.

Q. Your leg has not been in a better condition than it now is ever since the first of February of last year since you hurt it, isn't that true?

A. It is some better. I couldn't have walked on it if it hadn't.

Q. It is being increasingly better, isn't that true?

A. (Pause).

Mr. Mouritsen: Objected to as immaterial.

(Testimony of W. R. Johnston.)

Trial Examiner Lindsay: He may answer.

With these witnesses, go a little bit slower and, I think, probably we will get the answer.

Mr. Clark: Very well. I was pressing against 4:30, and I understand this gentleman won't be available next week.

Trial Examiner Lindsay: We will go later than 4:30 if necessary. [237]

Mr. Clark: Let us get this clear, Mr. Johnston.

Q. You have told us you were hurt on the 1st of September, 1938, about then, which is the date shown on this record, Board's Exhibit 3, of your ceasing your first period of employment for Boswell. That is true, isn't it?

A. Yes, sir.

Q. And you have also told us that even now your leg is not in such condition as to enable you to work as a bale hauler, isn't that true?

A. That may be explained. I haven't been out of the hospital but about two weeks, I guess. My leg has been operated on.

Q. I see.

Now, that has been true ever since February 1 of '38, namely, that you haven't been in a physical condition sufficient to work at the job as a bale hauler?

A. Oh, yes, I could work at it. After June, the middle of June, of that year, why, the leg still bothered me but I could work. It didn't handicap me from doing that. I could do it as good as I could do anything else.

(Testimony of W. R. Johnston.)

Q. You could do as good a job at that as anything else? A. Yes.

Q. So, by the middle of June of 1938 you could have worked at the job, is that right?

A. Yes, sir.

Q. Now, I am correct in stating, am I not, Mr. Johnston, that [238] your next employment by Boswell and Company commenced about the 27th of October of last year, isn't that right?

A. That would be somewhere close to it. I don't remember the exact date.

Q. I see.

And was that the start of a milling run during that fall? A. I believe it was.

Q. What was the job that you took on at that time?

A. They put me helping brand cattle.

Q. Helping brand cattle.

And wasn't it about October 27th last year that the cotton seed mill opened for a short period of time? Do you remember?

A. I don't remember just when it was exact. I couldn't say.

Q. During the time that you were hurt back in February and October 27th of last year, did you apply to the company for work?

A. Not until after when I came down about the—I guess about—if that was the 27th it must have been about the 10th of October when I applied for work.

(Testimony of W. R. Johnston.)

Q. After you had to quit in February you didn't apply again for work until October, about October 10th, or around the first of October, is that right? A. Yes. [239]

Q. And to whom did you apply, please?

A. Gordon Hammond.

Q. And he is the plant superintendent, isn't he? He is the man you applied to for a job?

A. Yes, sir.

Q. And it was then some days, namely, about two weeks until October 27th when you went back on the job? A. Yes, sir.

Q. All right.

And on that occasion you were employed as a what again? In what capacity? What did you do?

A. I did several different things.

Q. What did you first start to do?

A. Out in the branding pen.

Q. Branding cattle. All right.

Then what?

A. Oh, as a press helper.

Q. What is the nature of that job? That is in the cottonseed mill, isn't it?

A. It is in the gin, pressing bales of cotton.

Q. And what else did you do?

A. Sacking seed.

Q. In other words, you worked there, Mr. Johnston, on this second occasion from October 27 of 1938 through to the end of the week, November 11th—I mean November 3rd, of '38, through [240]

(Testimony of W. R. Johnston.)

the week ending November 10, '38, and through the week ending November 17, '38, or for a period of one, two, three, or four weeks, isn't that right?

A. Something like that. [241]

Q. And during that time, how many jobs were you put at?

A. Well, I don't know. There were several. I changed off.

Q. There was the time you were put at——

A. (Interrupting): General work.

Q. (Continuing): ——there was the time you were put branding cattle? A. Yes.

Q. And——

A. (Interrupting): As a press helper.

Q. Then what? A. Press helper.

Q. Then what?

A. Sewing sacks and sacking seed.

Q. Sewing sacks and sacking seed.

In other words, you were put at odd jobs, weren't you, during those four weeks? A. Yes, sir.

Q. And then, finally Mr. Hammond told you there wasn't any more work there, and let you go?

A. I was on the bale work at the last.

Q. That is another job you were put at; isn't that right? A. Yes.

Q. And finally Mr. Hammond told you there wasn't any more work left, and for you not to think that you were being laid off because you joined the Union; isn't that right? [242]

A. That is right.

(Testimony of W. R. Johnston.)

Q. Have you ever applied to the Company for work since? A. No, sir.

Q. As a matter of fact, Mr. Johnston, you know, don't you, that at that particular time in October and November of 1937 there was not—withdraw that.

You know, don't you, that during that particular time in October and November of 1937, there really wasn't work enough to be done around Boswell's for the number of men they were keeping on employment?

A. If you are referring to 1937——

Q. 1938, I mean?

Oh, there was plenty in '37, wasn't there?

A. Yes.

Q. '37 was a big season?

A. Yes, I imagine it was.

Q. In fact, in the year '37 and '38, your first year, when you worked for four months there, they ginned about forty thousand bales of cotton, didn't they? A. I don't remember.

Q. And in the last year, the one we are talking about here, in the Fall of '38, they only ginned ten thousand bales, isn't that right?

A. I couldn't say.

Q. There wasn't so much cotton around the plant, was there? [243]

Mr. Mouritsen: Objected to as vague and indefinite.

(Testimony of W. R. Johnston.)

Mr. Clark: He can tell his impressions, may it please your Honor, with propriety.

Trial Examiner Lindsay: He may answer, if he knows, but it seems to me that you have your records. No doubt they will be produced.

Mr. Clark: Yes, they will.

Q. Now, Mr. Johnston, what is the name of this Local Union that you belong to?

A. Cotton Products and Grain Mill Workers' Union.

Q. The Cotton Products and Grain Mill Workers' Union.

And what is the number of the Local?

A. 21798.

Q. All right.

And when was it that you joined?

A. November 7th, I believe.

Q. At any time did any—did Mr. Hammond or Mr. Robinson here ever tell you that you couldn't join any Union you wanted to? A. No, sir.

Q. As a matter of fact, there was posted on the billboard, or on a billboard in the plant, wasn't there, during November of last year——

I will ask that this be marked for identification, your Honor. I am getting mixed up on that. [244].

(Thereupon, the document above referred to was marked as Respondent Boswell's Exhibit No. 2 for identification.)

(Testimony of W. R. Johnston.)

BOSWELL'S EXHIBIT NO. 2

NOTICE TO EMPLOYEES

This company will not through its proper representatives or otherwise, restrain, coerce, intimidate or interfere with our employees' right to self organization and, furthermore, will not discriminate with regard to hire or tenure of employment because of affiliation with the American Federation of Labor or any other bona fide labor organization, as guaranteed by the National Labor Relations Act.

This notice will be posted for a period of fifteen days.

Final draft approved by Larsen.

Q. By Mr. Clark: Now, I want to ask you, Mr. Johnston, to look at an Exhibit which has been marked Boswell's Exhibit 2 in this case, and I want to specifically ask you whether or not there wasn't a sign just in those words posted in the Boswell plant while you were there in the Fall of '38, and whether or not you didn't read it?

Will you just take a look at it?

Trial Examiner Lindsay: Read it to yourself.

Mr. Clark: Just to yourself.

The Witness (Interrupting): It was not.

Q. By Mr. Clark: There was no such sign posted in the plant? A. No, sir.

Q. None that you saw, anyway?

A. Not that I saw.

Q. Did you read any sign posted in the plant

(Testimony of W. R. Johnston.)

while you were there in the Fall of last year, reading to the general effect that the employees could do anything they wanted so far as joining a labor organization was concerned? A. No, sir.

Q. Did you ever see an advertisement in the Corcoran paper under date of January 20th of this year, signed by Mr. Prior, [245] and stating that the Boswell officials had announced that so far as their employees were concerned, they were perfectly free to join your A. F. of L. Union? A. Yes, sir.

Q. You saw that? Let us see about that.

I will ask your Honor if what purports to be an issue dated January 20th, 1939, of the Corcoran News, consisting of three sheets of paper, of newspaper, may be marked for identification as Boswell's Exhibit next in order.

Trial Examiner Lindsay: Are you offering the whole paper or just a specific portion?

Mr. Clark: I am not going to offer it all, but mark it for identification at this time, and I thought I would mark the whole paper for identification.

(Thereupon, the document above referred to was marked as Respondent Boswell's Exhibit No. 3 for identification.)

Q. By Mr. Clark: I want to direct your attention to the inside page of the paper which has been marked for identification as Boswell Company's Exhibit 3, and particularly to the article which appears in the lower left-hand corner, which is headed or

(Testimony of W. R. Johnston.)

which has the heading "Attention J. G. Boswell Company Employees," and I will ask you whether that is the advertisement or article that you have just referred to in your testimony? [246]

Mr. Mouritsen: Isn't it customary to show such things to counsel?

Trial Examiner Lindsay: May I see it, as long as it is up here?

Mr. Clark: Pardon me. I am getting all mixed up on this procedure. I think I will go back to handing them to you first.

Trial Examiner Lindsay: Will you have that specific article marked for identification?

Mr. Clark: Yes.

(The article referred to was so marked.)

Mr. Clark: I will state for the record, then, may it please the Examiner, that my offer for identification is confined solely to this article which has been last marked.

(The document referred to was passed to Mr. Mouritsen.)

Mr. Clark: Very well.

Q. Now, I will repeat the last question to you, Mr. Johnston: Is the article which I now show you, and which has been marked Respondent Boswell's Exhibit 3 for identification, the one that you had in mind when you told me that you had seen such an article? A. Yes, sir.

Q. Will you read it to yourself? Is that true?

(Testimony of W. R. Johnston.)

A. That is true.

Q. And did you see that in the *Corcoran News* on or about [247] January 20th?

A. Something around there.

Mr. Clark: We offer it in evidence, your Honor.

Mr. Mouritsen: No objection.

Trial Examiner Lindsay: Respondent's 3 received in evidence.

(Thereupon, the article in the newspaper referred to was marked as Respondent Boswell Company's Exhibit No. 3 and received in evidence.)

BOSWELL'S EXHIBIT NO. 3

ATTENTION

J. G. Boswell Co. Employees

Many employees of the J. G. Boswell Company have stated that foremen of the company have told them that membership in the American Federation of Labor would affect their employment with the company.

Mr. Louis Robinson, general manager of the *Corcoran* plant, stated in the presence of the following men who attended a meeting in his office January 17:1939:

Maurice Howard, Field Examiner of the National Labor Relations Board

Wm. Boswell, of the company

(Testimony of W. R. Johnston.)

E. F. Prior, Sec.-Treas, California State Council of
Soap and Edible Oil Workers

Wm. Robinson, employee of company

Kelly Hammond, employee of company

L. A. Spear Elgin Ely

O. L. Farr George Andrade

R. K. Martin Walter Winslow

W. R. Johnston

Officers and members of the Cotton Products and
Grain Mill Workers Union No. 21798:

“No foreman or anyone else is authorized to make any statement regarding any employee’s membership or non-membership in any union by the company and that no employee’s position would be affected because of membership in any union.”

After the declaration of company policy by Mr. Robinson, no employee of the company should be afraid to attend a meeting for the purpose of learning the history and gains made by organization in their industry—they really owe it to themselves to learn everything possible about these new developments.

A MEETING WILL BE HELD IN THE

Corcoran American Legion Hall

January 23, 1939, at 8:00 p. m.

for the purpose of discussing labor problems with
the employees of this industry.

(Testimony of W. R. Johnston.)

COTTON PRODUCTS & GRAIN MILL
WORKERS UNION NO. 21798

R. K. MARTIN, Secretary

CALIFORNIA STATE COUNCIL OF SOAP
AND EDIBLE OIL WORKERS

E. F. PRIOR, Secty-Treas.

[Endorsed]: Filed 5/19/39.

Mr. Clark: Now, is your Honor accustomed to having Exhibits read into the record, or do you require a statement or a request by counsel if they be deemed read into the record, to make them a part of the record?

Trial Examiner Lindsay: Neither one. The record is there, and it speaks for itself.

Mr. Clark: Very well.

Q. Now, you never heard anything then, Mr. Johnston, to make or to lead you to any other belief than the statement in that article, isn't that right? A. I don't think so.

Q. All right.

How many members are there in your Union, do you know? A. I don't know exactly.

Q. Well, can you approximate it for us?

A. I don't think I could. [248]

Q. Well, are there as many as a dozen?

Mr. Mouritsen: I object to this question upon the ground it is incompetent, irrelevant and immaterial.

(Testimony of W. R. Johnston.)

Mr. Clark: Well, on the ground of competency, I want to point out to the Examiner that there is a charge here that we have not only discriminated against—I am speaking now of the Boswell Company—against employees under Subsection 8 (3) of having joined a Union, but that we have rewarded persons by raises in wage scale, and so forth, the complaint so alleges, for not joining this particular Union.

Now, it is impossible for us to ascertain, may it please the Examiner, who these persons are with respect to this about which we are accused, unless we know what employees are members of the Union. I asked that question yesterday, and the Examiner ruled it would be incompetent. I asked it with respect to the charter which was admitted in evidence, and on further reflection I would like to submit the thought I have just tried to express to your Honor. I concede so far as this witness is concerned I perhaps am going too far in asking him to approximate how many, if there are other more credible sources for getting that information, but I am trying to answer counsel's objection based on the claim of incompetency of the evidence.

Mr. Mouritsen: Well, Mr. Examiner, if I understand counsel's statement correct, he is not stating the contents of the complaint. There is no allegation in the complaint to the effect [249] that the members of this Union were rewarded by any raises in pay in any manner.

(Testimony of W. R. Johnston.)

Mr. Clark: Well, I am not making that statement. I say you allege in the complaint we have rewarded persons who have not joined this Union by raising their pay, and that we have discriminated against persons who did join this Union.

Now, how are we to know whom we are accused of having discriminated against, or having rewarded if we don't know who they are? We ought to be entitled to the membership of your Union. We can't defend against it.

Mr. Mouritsen: There was no allegation that every employee who did not become a member of the Union was accorded an increase in pay.

Mr. Clark: There is certainly an allegation which, if the Examiner will examine it—

Trial Examiner Lindsay (Interrupting): Off the record.

(Discussion outside the record.)

Mr. Clark: That is all.

Mr. Mouritsen: Just a minute.

Redirect Examination

Q. By Mr. Mouritsen: Now, Mr. Johnston, how long had you been out of the employ of the J. G. Boswell Company before you ever saw the statement that has been introduced as Boswell's Exhibit No. 3?

A. When is it dated? January 20th? I was out the 17th of [250] November of '38.

Q. Now, after you were laid off on November 17th, 1938, did you return to the Boswell plant at all?

(Testimony of W. R. Johnston.)

A. Yes, sir.

Q. When did you do that?

A. On the 18th of November, '38.

Q. Did you see anybody working on the bale wagon at that time?

A. Yes, sir.

Mr. Clark: I object to that as being beyond the scope of the cross examination. It was not gone into on direct or on cross examination.

Trial Examiner Lindsay: May I explain, gentlemen, in these hearings, as I stated the other day, I do not pay very much attention to the strict rules as to questioning a witness and you will be given the same privilege with your witnesses.

Mr. Clark: Very well.

Trial Examiner Lindsay: We want all the facts, and I am not particular about the procedure in getting them so long as it is more or less orderly.

You may answer.

The Witness: The question again?

(The question referred to was read by the reporter, as set forth above.)

Mr. Mouritsen: Nothing further. [251]

Trial Examiner Lindsay: Any other questions?

Mr. Clark: Not from us.

Trial Examiner Lindsay: I have just one or two.

Q. Was your leg injured while you were working?

A. Yes, sir.

Q. How did the injury happen?

A. I stepped in a hole after stepping off a bale wagon out in the cotton yard.

(Testimony of W. R. Johnston.)

Q. Now, did the injury immediately affect your ability to work? A. Yes, sir.

Q. And what happened immediately after your injury? A. They took me to the doctor.

Q. Who took you to the doctor?

A. I don't recall now. I think "Red" Jorgenson—I don't know who else went with him, if anybody.

Q. Now, during the course of your employment, did you ever notice whether or not anyone else was injured while you were working there?

A. Yes, sir. [252]

Q. And do you know what the policy of the Boswell Company is regarding the re-employment of an injured person who is injured while on the job?

A. No, sir.

Q. Can you give me the name of an individual who was injured while at work for the Boswell Respondent Company?

A. I can give you several, I guess; E. C. Powell was one.

Q. Was his injury great enough to cause him to be off from duty?

A. Well, I don't know; a hand.

Q. Was he off duty? A. Yes, sir.

Q. After his injury was cured, was he taken back to work? A. Yes, sir.

Q. Is that true with the other persons who were injured, if you know?

A. All that I know of, yes.

Q. After they became sufficiently well enough to

(Testimony of W. R. Johnston.)

go back to work, they were taken back by the respondent company, is that correct? A. Yes, sir.

Q. Who were some of the others other than this one you mentioned?

A. I can't recall them by name; all I know is by just seeing them, something like that. I don't know them individually, [253] just know them working.

Trial Examiner Lindsay: That is all.

Mr. Clark: Just one question.

Recross Examination

Q. By Mr. Clark: You, of course, received workmen's compensation insurance upon your injury, didn't you? A. Beg pardon?

Q. You received payments, didn't you, from the workmen's compensation fund after you were injured? A. Yes, sir.

Q. Surely. For how long?

A. I don't remember the exact date.

Mr. Clark: Well, the Examiner may take judicial notice of that fact, anyway.

Trial Examiner Lindsay: I understand the State law.

You are not now receiving that compensation?

The Witness: Yes, sir.

Q. By Mr. Clark: You are?

A. Up until Monday—it is not that—the leg has been operated upon since that time.

Q. When did the compensation payments start

(Testimony of W. R. Johnston.)

again to you? A. Sometime in February, '39.

Q. In February, '39. And have they been paid continuously up to the present time? [254]

A. Yes, sir.

Q. And how about the cost of the operation? Was that paid for *the* the State insurance fund?

A. It is paid for by the Associated Indemnity.

Q. By the insurance company? A. Yes.

Q. The Boswell Company paid the premium on that insurance, didn't they?

Mr. Mouritsen: I object. He wouldn't know.

Q. By Mr. Clark: You didn't pay them?

A. No.

Mr. Mouritsen: One other question, Mr. Johnston.

While working for Boswell, either in '37 or '38, did you ever receive any complaint regarding your work?

The Witness: No, sir.

Mr. Mouritsen: Nothing further.

Mr. Clark: Nothing further.

Trial Examiner Lindsay: That is all.

(Witness excused.)

Trial Examiner Lindsay: We will adjourn until Monday morning. We will adjourn until 10:00 o'clock Monday morning and on Monday morning the hearing will be reconvened in the American Legion Hall in this city.

(Whereupon, at 4:50 o'clock p. m., the hearing adjourned until Monday, May 22, 1939, at 10:00 o'clock a. m.) [255]

American Legion Hall,
Corcoran, California,
Monday, May 22, 1939 [256]

PROCEEDINGS

Trial Examiner Lindsay: Hearing called to order.

Mr. Mouritsen: Mr. Examiner, I am now in receipt of the order of the Board designating John T. Lindsay to act as Trial Examiner in this matter, and at this time I desire to offer that order, which is certified by the Secretary of the Board, as Board's Exhibit 1-JJ, and also to withdraw at this time the telegram which was previously introduced.

Mr. Clark: No objection so far as the substitution of the exhibits is concerned. Of course, all the evidence is subject to the motions to dismiss and exceptions taken.

Trial Examiner Lindsay: It may be received.

Mr. Mouritsen: At this time, also, Mr. Examiner, I should like to ask the Examiner's indulgence in that I may recall Mr. Johnston for one or two questions that are very necessary in view of the decisions of the Ninth Circuit Court of Appeals. If I may be permitted to do that, I will call Mr. Johnston.

Trial Examiner Lindsay: No objection to recalling Mr. Johnston?

Mr. Clark: No.

